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S. HRG. 98-887

PROHIBITION OF THE EXPORTATION OF FRESH WATER

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2239

TO AMEND THE EXPORT ADMINISTRATION ACT OF 1979 TO PROHIBIT THE EXPORTATION OF FRESH WATER IN BULK BY TANKER

JUNE 7, 1984

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

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PROHIBITION OF THE EXPORTATION OF FRESH WATER

THURSDAY, JUNE 7, 1984

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,

Washington, DC.

The subcommittee met at 1:30 p.m., in room SD-538, Dirksen Senate Office Building, Senator Alfonse D'Amato presiding.

Present: Senator D'Amato.

OPENING STATEMENT OF SENATOR D'AMATO

Senator D'AMATO. The subcommittee will come to order.

Our hearing today will focus on a topic of immediate and pressing concern, the exportation to a foreign nation of one of our Nation's—and my State's—scarce and precious resources, fresh water from the Hudson River. This issue raises two concerns: Pollution and the expropriation of public property.

I'm going to ask that the full text of this statement be included in the record as if read in its entirety so that we can take the testimony of my distinguished colleagues. Senator Moynihan and I have introduced the legislation. Senator Moynihan has been in the forefront in demonstrating his concern for the proper balances between concerns for the free enterprise system and the environment. Senator Moynihan has also led the effort to see to it that the input for this comes from State and local officials so that we can see to it that we do not create a situation that will be hazardous or injurious to our communities and to the well-being of our people.

So I'm going to ask as our first witness, Senator Daniel Patrick Moynihan, the senior Senator from New York, to give his testimony and then we will hear from the other witnesses.

[The complete opening statement of Senator D'Amato follows:]

STATEMENT BY SENATOR ALFONSE D'AMATO

BEFORE THE SENATE BANKING COMMITTEE

ON THE EXPORTATION OF FRESH WATER

JUNE 7, 1984

OUR HEARING TODAY WILL FOCUS ON A TOPIC OF IMMEDIATE AND PRESSING CONCERN, THE EXPORTATION TO A FOREIGN NATION OF ONE OF OUR NATION'S -- AND MY STATE'S -- SCARCE AND PRECIOUS RESOURCES, FRESH WATER FROM THE HUDSON RIVER. THIS ISSUE RAISES TWO CONCERNS: POLLUTION AND THE EXPROPRIATION OF PUBLIC PROPERTY.

WHEN TANKERS SAIL UP THE HUDSON RIVER TO LOAD WATER, THEY CARRY WITH THEM BALLAST WHICH IS DISCHARGED AT THE FRESH WATER LOADING POINT. IT HAS BEEN SUBSTANTIATED BY AT LEAST TWO INDEPENDENT TESTS THAT, ALTHOUGH THE BALLAST IS PRIMARILY SALT WATER, IT DOES CONTAIN SOME PETROLEUM DERIVATIVES. THEREFORE, WE MUST BE CONCERNED ABOUT THE DUMPING OF SUCH CONTAMINANTS AS BENZENE, TYLENE, AND ZYLENE

IN THE RIVER. THE TAKING OF THE HUDSON RIVER'S FRESH WATER FROM NEW YORK TO OTHER PARTS OF THE WORLD WITHOUT ANY COMPENSATION TO THE STATE OR ITS PEOPLE IS ALSO A QUESTION WHICH MUST BE ADDRESSED.

THIS HEARING IS THE PROPER FORUM TO INQUIRE AS TO WHETHER OR NOT THESE ISSUES SHOULD BE ADDRESSED BY FEDERAL LEGISLATION. I PERSONALLY BELIEVE THAT THE PROTECTION OF AMERICA'S MOST VALUABLE RESOURCE IS WORTHY OF LEGISLATION. CONSEQUENTLY, I HAVE SPONSORED S. 2239, WHICH AMENDS THE EXPORT ADMINISTRATION ACT OF 1979, ALONG WITH MY DISTINGUISHED SENIOR COLLEAGUE FROM NEW YORK.

OFTEN CALLED NEW YORK'S OIL, OUR FRESH WATER IS A VALUABLE AND PRECIOUS RESOURCE. AS AN OLD INDUSTRIAL STATE, NEW YORK IS BURDENED WITH COSTS THAT THE SUN BELT STATES HAVE AVOIDED; INCLUDING MASSIVE INFRASTRUCTURE REPAIR NEEDS AND SKY-ROCKETING ENERGY PRICES. HOWEVER, WE ARE BLESSED WITH VALUABLE AND PLENTIFUL WATER SUPPLIES. ALTHOUGH MORE THAN FOUR TRILLION GALLONS OF RAIN AND SNOW FALL ON THE

LOWER FORTY-EIGHT STATES EVERYDAY, THE SUPPLY OF WATER IS NOT EQUALLY APPORTIONED. WHILE THE NORTHEAST IS ESPECIALLY WELL ENDOWED, MANY OTHER STATES DO NOT ENJOY THIS ASSET. INSOFAR AS THE AVAILABILITY OF WATER IS BECOMING A BINDING CONSTRAINT ON THE LOCATION OF ECONOMIC DEVELOPMENT, THE DAYS WHEN WATER WAS A FREE GOOD AND AVAILABLE IN ESSENTIALLY LIMITLESS QUANTITIES ARE GONE FOREVER. THEREFORE, IT IS INCUMBENT UPON THOSE REGIONS WITH THIS ABUNDANT NATURAL RESOURCE TO UTILIZE THAT WITH WHICH THEY ARE ENDOWED FOR THE BENEFIT OF THEIR CITIZENRY, RATHER THAN FOR THE ECONOMIC SUCCESS OF A FEW LARGE CORPORATIONS.

WHILE THE LEGISLATION NOW BEFORE THIS COMMITTEE WOULD COVER ALL WATERWAYS IN THE UNITED STATES, IT WAS THE SITUATION ON THE HUDSON RIVER WHICH SPURRED MY INTEREST IN THE FATE OF AMERICA'S LIMITED FRESH WATER SUPPLIES. HOWEVER, I WILL ADDRESS BOTH THE LOCAL ISSUE AND ITS RAMIFICATIONS ON THE NATIONAL LEVEL.

AS ONE OF THE MOST PRODUCTIVE TIDAL ESTUARIES IN THE WORLD, THE HUDSON RIVER RELIES ON A CONSTANT SUPPLY OF CLEAN FRESH WATER. THE FRESH WATER SPRINGS UNDER ITS BED MAINTAIN AN INFLOW SUFFICIENT TO CARRY ENOUGH NUTRIENTS DOWNRIVER TO MAINTAIN THE LUSH MARINE LIFE WHICH PLAYS AN IMPORTANT ECONOMIC ROLE IN NEW YORK STATE. THIS UNDISRUPTED INFLOW OF FRESH WATER IS ESSENTIAL TO THE VITALITY OF THE RIVER; IT IS NOT LOST TO THE SEA AS MANY PEOPLE MISTAKENLY BELIEVE. THIS FRESH WATER MAINTAINS BOTH AQUATIC AND HUMAN LIFE. THE SIX PUBLIC WATER SUPPLIES ALONG THE HUDSON RIVER FURNISH OVER EIGHTEEN MILLION GALLONS OF WATER A DAY TO THE TOWNS AND COMMUNITIES WHICH BORDER THIS MAGNIFICENT RIVER. THUS, IN ORDER TO SUSTAIN THIS FERTILE ECOSYSTEM, TO AID THE AMAZING CONSERVATION AND CLEAN-UP EFFORTS OF ENVIRONMENTALLY CONCERNED CITIZENS, AND, MORE IMPORTANTLY, TO INSURE SAFE DRINKING WATER, I HAVE COSPONSORED S. 2239.

THIS LEGISLATION, INITIALLY DRAFTED AND INTRODUCED IN THE HOUSE OF REPRESENTATIVES BY MY DISTINGUISHED COLLEAGUE,

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HAM FISH, JR., AMENDS THE EXPORT ADMINISTRATION ACT OF 1979 TO PROHIBIT THE EXPORTATION OF FRESH WATER, IN BULK BY TANKER, EXCEPT WITH PROPER PROCEDURE. THIS WOULD PUT AN END TO THE UNCHECKED PRACTICES OF COMPANIES SUCH AS EXXON, WHICH HAS EXPORTED HUDSON RIVER FRESH WATER WITHOUT EITHER STATE PERMIT OR REIMBURSEMENT. ONLY IF A SHIPPER IS GRANTED A LICENSE FOR THE EXPORT BY TANKER OF SPECIFIED AMOUNTS OF WATER BY THE SECRETARY OF COMMERCE, IN CONSULTATION WITH THE SECRETARY OF TRANSPORTATION, AND ONLY IF THE AFFECTED STATES AND UNITS OF LOCAL GOVERNMENT CONCUR IN THE GRANTING OF THIS LICENSE AND RECEIVE APPROPRIATE REIMBURSEMENT FOR THE WATER, MAY EXPORTATION OCCUR. THIS LEGISLATION WILL NOT DISRUPT REGULAR SHIPPING ACTIVITY, FOR THE TERM EXPORT DOES NOT INCLUDE FRESH WATER USED AS BALLAST OR FOR ONBOARD CONSUMPTION.

BEGINNING IN 1971, EXXON REMOVED HUDSON RIVER WATER AND SHIPPED IT TO ARUBA WHERE THIS CORPORATION RUNS SOME OF ITS OIL REFINERIES. AS PART OF THIS PROCEDURE, SALT WATER

BALLAST FROM THE TANKERS WAS DUMPED INTO THE HUDSON RIVER, THUS CREATING A POTENTIALLY DAMAGING IMPACT ON BOTH THE MARINE LIFE AND THE COMMUNITIES WHICH USE WATER FROM THE HUDSON RIVER FOR DRINKING WATER.

COUNTLESS EFFORTS AND MILLIONS OF DOLLARS HAVE BEEN DEVOTED TO CLEANING UP THIS WATERWAY; THIS RIVER HAS BECOME AN INVESTMENT OF NEW YORK STATE. YET, EXXON WAS TAKING THE BENEFITS OF NEW YORK'S EFFORTS AND SIMULTANEOUSLY POSING THE THREAT OF ENVIRONMENTAL DANGER TO NEW YORK. FROM 1971 TO 1976, EXXON TOOK, ON THE AVERAGE, THREE TANKERS FULL OF WATER EACH YEAR; FROM 1977 TO 1981, THIS AVERAGE INCREASED TO SEVEN. THEN, IN 1982 AND 1983, THESE FIGURES INCREASED MONUMENTALLY; 32 LOADS WERE TAKEN IN 1982 AND 61 LOADS WERE TAKEN IN 1983. A TOTAL OF OVER THREE MILLION TONS OF FRESH WATER WAS TAKEN FROM THE HUDSON RIVER BY EXXON WITHOUT REIMBURSEMENT TO NEW YORK STATE AND WITHOUT STATE PERMIT. EXXON MERELY LOADED ITS OIL TANKERS WITH NEW YORK'S MOST PRECIOUS RESOURCE AND SHIPPED IT OFF TO ARUBA IN EXCHANGE

FOR A TAX REDUCTION FROM THAT NATION. CLAIMING NOT TO HAVE BEEN FULLY REIMBURSED BY ARUBA FOR THIS TRANSPORT OF WATER, HOWEVER, EXXON ALSO DECLARED A BUSINESS LOSS ON THEIR U.S. TAX REFORMS AND, CONSEQUENTLY, NOT ONLY DECREASED THEIR TAX BILL IN ARUBA, BUT ALSO IN THE UNITED STATES. EXXON TREATED THE WATER THAT NEW YORK HAD INVESTED MILLIONS OF DOLLARS IN AS A FREE GOOD AND USED IT FOR ITS OWN BENEFIT.

BECAUSE EXXON USED TWENTY PERCENT OF ARUBA'S WATER FOR ITS REFINERY, WHEN THE ISLAND'S DESALINIZATION FACILITIES ENCOUNTERED OPERATIONAL DIFFICULTIES AND THUS COULD NOT MEET THE WATER REQUIREMENTS OF EXXON OR THE ISLAND, EXXON WAS FORCED TO FIND ALTERNATE WATER SOURCES IN ORDER TO MAINTAIN OPERATIONS. EXXON NOT ONLY NEEDED THE WATER FOR THE REFINING PROCESS, BUT ALSO FOR ELECTRICITY PRODUCTION. THUS, IT WOULD APPEAR THAT EXXON'S ACTIONS WERE FOR ITS OWN BENEFIT, RATHER THAN OUT OF ANY HUMANITARIAN CONSIDERATIONS.

EXXON DERIVED VALUE FROM THE WATER IT EXPROPRIATED -- AND LEFT POTENTIALLY POLLUTED WATER IN ITS PLACE -- BUT

COMPENSATED NO ONE FOR ITS ACTIONS. WE CLEARLY NEED FEDERAL LEGISLATION SUCH AS S. 2239 TO ENSURE THIS NEVER HAPPENS AGAIN.

TESTIFYING AT TODAY'S HEARING WILL BE SENATOR MOYNIHAN, MY DISTINGUISHED COSPONSOR OF THIS LEGISLATION IN THE SENATE, CONGRESSMAN FISH, THE ORIGINATOR OF THIS LEGISLATION AND THE SPONSOR OF THE VERSION BEING CONSIDERED BY THE HOUSE, AND CONGRESSMEN OTTINGER AND GILMAN, COSPONSORS OF MR. FISH'S LEGISLATION. ALSO APPEARING WILL BE MR. JAMES SEVINSKY OF THE NEW YORK STATE ATTORNEY GENERAL'S OFFICE, MR. NICK ROBINSON, THE COUNSEL FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, MR. WILLIAM LARKIN, AN ASSEMBLYMAN FROM ONE OF THE AFFECTED AREAS , MR. JIM CRONIN OF THE HUDSON RIVER FISHERMAN'S ASSOCIATION, A GROUP WHICH HAS FOUGHT LONG AND HARD TO PROTECT THE HUDSON RIVER, AND MR. GERALD GRAVES, A VICE PRESIDENT WITH EXXON INTERNATIONAL, WHO WILL REPRESENT THE VIEWS OF THE COMPANY WHICH IS RESPONSIBLE FOR GATHERING US HERE TODAY.

II

98TH CONGRESS
2D SESSION

S. 2239

To amend the Export Administration Act of 1979 to prohibit the exportation of fresh water in bulk by tanker.

IN THE SENATE OF THE UNITED STATES

JANUARY 31 (legislative day, JANUARY 30), 1984

Mr. MOYNIHAN (for himself and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To amend the Export Administration Act of 1979 to prohibit the exportation of fresh water in bulk by tanker.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Export Administration Act of 1979 (50 U.S.C. App. 2406) is amended by adding at the end thereof the following new subsection:

"(k) EXPORTATION OF FRESH WATER.—(1) No fresh water removed from the navigable waters of the United States may be exported in bulk by tanker except pursuant to a license granted under paragraph (2) of this subsection.

"(2) The Secretary, in consultation with the Secretary of Transportation, may issue regulations providing for the granting of licenses for the export by tanker of specified amounts of water subject to the prohibition contained in paragraph (1). Such regulations may provide for the granting of any such license only if the affected States and units of local government concur in the granting of the license and receive appropriate reimbursement for the water exported under the license. Regulations under this paragraph shall be issued in accordance with the provisions of sections 551 and 553 through 559 of title 5, United States Code, and shall be subject to the provisions of sections 701 through 706 of that title.

"(3) For purposes of this subsection—

"(A) the term 'navigable waters of the United States' means (i) the navigable waters of the United States, and their connecting and tributary waters, shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and (ii) the waters of the Great Lakes, and their connecting and tributary waters, on the United States side of the International Boundary; and

"(B) the term 'tanker' means a vessel constructed or adapted primarily to carry oil or other liquid cargoes in bulk in its cargo space.".

SEC. 2. Section 13(a) of the Export Administration Act of 1979 (50 U.S.C. App. 2412(a)) is amended by striking out "section 11(c)(2)" and inserting in lieu thereof "sections 7(k) and 11(c)(2)".

○

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator MOYNIHAN. Thank you, Mr. Chairman. I have a prepared statement which I would like to have included in the record as if read.

Senator D'AMATO. So ordered.

[The complete statement follows:]

MR. CHAIRMAN:

I APPRECIATE THE OPPORTUNITY TO TESTIFY BEFORE THE SUBCOMMITTEE ON S. 2239, A BILL I INTRODUCED ON JANUARY 31 WITH THE COSPONSORSHIP OF SENATOR D'AMATO. THE BILL WOULD AMEND THE EXPORT ADMINISTRATION ACT OF 1979 TO REQUIRE BUSINESSES TO SECURE A LICENSE FROM THE SECRETARIES OF COMMERCE AND TRANSPORTATION BEFORE EXPORTING FRESH WATER IN BULK BY TANKER. THE AFFECTED STATE AND LOCAL GOVERNMENTS WOULD HAVE TO CONCUR BEFORE THE LICENSE COULD BE GRANTED, AND THEY WOULD BE REIMBURSED FOR ALL WATER WITHDRAWN. THE BILL, MOREOVER, APPLIES TO ALL NAVIGABLE WATERS OF THE UNITED STATES.

SHORTLY AFTER I INTRODUCED S. 2239, THE SENATE PASSED A PACKAGE OF AMENDMENTS TO THE EXPORT ADMINISTRATION ACT. I HAD CONSIDERED OFFERING THE BILL FOR INCLUSION IN THAT PACKAGE. HOWEVER, I QUITE ACCEPT THAT THE PROPOSAL AFFECTS

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MORE THAN ONE RIVER AND THAT A HEARING OUGHT TO BE HELD BEFORE WE LEGISLATE. I THEREFORE AGREED NOT TO SEEK PASSAGE OF S. 2239 UNTIL AFTER THIS HEARING.

THE ISSUE BEFORE US IS ONE OF FAIRNESS. FRESH WATER IS A RESOURCE WITH A DEFINITE ECONOMIC VALUE. IT COSTS MONEY TO MAINTAIN ITS QUALITY, CONTROL ITS FLOW, AND CONVEY IT TO USERS. AND IN ADDITION TO BEING A BASIC NECESSITY OF LIFE, FRESH WATER PROVIDES ECONOMIC BENEFITS AS A NEEDED COMPONENT OF MOST INDUSTRIAL OPERATIONS. I INTRODUCED S.2239 OUT OF THE CONVICTION THAT THE USERS OF THIS VALUABLE RESOURCE SHOULD PAY A FAIR PRICE FOR IT.

LARGE VESSELS SUCH AS OIL TANKERS GENERALLY CARRY BALLAST WATER WHEN EMPTY OF CARGO, IN ORDER TO MAINTAIN SUFFICIENT DEPTH AND STABILITY FOR NAVIGATION. SALT WATER CAN BE USED FOR THIS PURPOSE, AND OFTEN IS; BUT A CARRIER CAN REAP ECONOMIC BENEFITS BY USING FRESH WATER AS BALLAST, SELLING IT AT THE DESTINATION OR USING IT IN INDUSTRIAL OPERATIONS. EQUITY DEMANDS THAT THESE BENEFITS BE SHARED WITH THE COMMUNITIES WHOSE WATER IS TAKEN.

THE PRACTICES TO BE REGULATED BY THIS BILL ARE TYPIFIED BY AN EXAMPLE IN NEW YORK. BETWEEN 1977 AND 1983, TANKERS OPERATED BY THE EXXON CORPORATION EXPORTED 3 MILLION TONS OF FRESH WATER FROM A REACH OF THE HUDSON RIVER ABOUT 80 MILES NORTH OF NEW YORK CITY. EXXON TRANSPORTED THE WATER TO ITS REFINERY IN WATER-SHORT ARUBA, SAVING THE COSTS OF SECURING AN ALTERNATIVE SUPPLY AND SELLING SOME OF THE WATER TO THE GOVERNMENT OF ARUBA. NOTE EXXON OBTAINED THIS WATER FREE OF CHARGE ALTHOUGH THE STATE OF NEW YORK AND COMMUNITIES ON THE HUDSON DID NOT MAINTAIN THE QUALITY OF THE WATER FOR FREE. THIS PRACTICE ALSO HAS RAISED CERTAIN PROBLEMS CONCERNING WATER QUALITY. BEFORE WITHDRAWING THE RIVER WATER, A TANKER MUST DISCHARGE THE BALLAST WATER ALREADY ON BOARD. THIS WATER, NEEDED FOR THE VOYAGE UPRIVER, WAS NOT ONLY SALINE BUT CONTAMINATED WITH PETROLEUM.

THE SAME PRACTICE COULD OCCUR IN NAVIGABLE FRESH WATER THROUGHOUT THE NATION, INCLUDING THE GREAT LAKES AND THE DELAWARE AND MISSISSIPPI RIVERS. MANY OF THESE WATER BODIES

SERVE AS SOURCES OF DRINKING WATER FOR NEARBY COMMUNITIES, AND THEIR PROTECTION AND WISE USE ARE ESSENTIAL.

I AM AWARE THAT EXXON HAS AGREED TO TEMPORARILY HALT WITHDRAWALS FROM THE HUDSON AND TO CONTRIBUTE $500,000 FOR RIVER CONSERVATION EFFORTS. YET THE NEED FOR LEGISLATION IS UNCHANGED.

LET ME EMPHASIZE THAT I AM OPEN TO SUGGESTIONS FOR IMPROVEMENTS TO THE BILL. FOR EXAMPLE, I DID NOT INTEND TO PLACE ANY RESTRICTIONS ON THE USE OF FRESH WATER SOLELY FOR BALLAST WHEN THERE IS NO REASONABLE ALTERNATIVE. I BELIEVE THAT A SIMPLE MODIFICATION IN THE LEGISLATIVE LANGUAGE COULD MAKE THIS CLEAR.

MR. CHAIRMAN, I THANK YOU FOR THE OPPORTUNITY TO EXPRESS MY VIEWS.

Senator MOYNIHAN. In the simplest terms and in order to hear from our friends and colleagues from the House, I would simply state that the bill we have introduced would require that the Secretary of Transportation issue regulations providing for the granting of licenses for the export by tanker of specified amounts of water from the United States to other parts of the world.

The simple proposition is that the fresh water of the navigable waters of the United States is public property. It belongs to the jurisdictions involved and it is a valuable resource and it should not be taken out of this country and used for commercial purposes elsewhere without a permit and without compensation.

That, in essence, is what we propose, and I hope we will find agreement from our friends in the Hudson Valley.

The Hudson River Fishermen's Association found out about the practice of Exxon and the State has now reached it seems to me a very fine agreement with them and I think that there is agreement

that there is need for the legislation to be enacted and it's time to start. Thank you.

Senator D'AMATO. Thank you very much, Senator Moynihan.

Congressman Fish.

STATEMENT OF HAMILTON FISH, JR.. U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Representative FISH. Thank you, Mr. Chairman. I, too, ask that my statement appear in the record as if read.

[The complete statement follows:]

THANK YOU, MR. CHAIRMAN, FOR THE OPPORTUNITY TO APPEAR BEFORE THIS SUBCOMMITTEE ON AN ISSUE OF EXTREME IMPORTANCE TO THE PEOPLE OF NEW YORK.

IN THE SPRING OF 1983, THE HUDSON RIVER FISHERMEN'S ASSOCIATION BROUGHT TO MY ATTENTION THAT EXXON OIL TANKERS WERE POSSIBLY VIOLATING FEDERAL AND STATE WATER POLLUTION LAWS. THESE TANKERS WERE BRINGING REFINED OIL FROM THE CARIBBEAN ISLAND OF ARUBA TO THE PORT OF NEW YORK FOR DISTRIBUTION AND MARKETING. AFTER UNLOADING THEIR CARGO, THESE TANKERS WOULD RINSE THEIR TANKS WITH SALT WATER AND PROCEED UP THE HUDSON RIVER TO A LOCATION BETWEEN POUGHKEEPSIE AND HYDE PARK IN DUTCHESS COUNTY. THE TANKER WOULD THEN DUMP THE SALT WATER RINSE INTO THE RIVER AND FILL THEIR TANKS WITH FRESH WATER. THIS FRESH WATER WAS THEN TAKEN BACK TO ARUBA FOR COMMERCIAL PURPOSES -- FOR USE AT AN EXXON REFINERY ON THAT ISLAND AND FOR USE AS DRINKING WATER THERE.

AN INVESTIGATION WAS UNDERTAKEN INVOLVING REGIONAL REPRESENTATIVES OF THE COAST GUARD, THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY AND THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC). THE NEW YORK STATE DEC DETERMINED THAT EXXON DID NOT HAVE THE REQUIRED STATE PERMITS FOR DUMPING AND COLLECTING WATER.

AS A RESULT OF THIS INVESTIGATION, A SUIT WAS BROUGHT BY THE STATE OF NEW YORK AGAINST THE EXXON CORPORATION. IT IS MY UNDERSTANDING THAT THIS LITIGATION HAS NOW BEEN SETTLED, WITH

$1.5 MILLION IN REIMBURSEMENT TO GO TO NEW YORK STATE AND $250,000.00 EACH TO BE PAID TO THE HUDSON RIVER FISHERMAN'S ASSOCIATION AND THE NATIONAL RESOURCES DEFENSE COUNCIL, INC. AS PART OF THIS SETTLEMENT, EXXON HAS ALSO AGREED TO SUSPEND THESE ACTIVITIES FOR AN APPROPRIATE PERIOD OF TIME.

IN THE COURSE OF MY INQUIRY INTO THIS PROBLEM, I WAS ASTONISHED TO DISCOVER THAT NO FEDERAL LAW EXISTED REGARDING THE ISSUE OF TAKING ON FRESH WATER FROM INLAND WATERWAYS IN THE UNITED STATES AND BRINGING IT ELSEWHERE FOR COMMERCIAL USE. THE CLEAN WATER ACT AND THE REFUSE ACT DEAL WITH WATER POLLUTION OR NAVIGATION PROBLEMS AND CONTAIN NO PROHIBITIONS AGAINST SUCH PRACTICES.

CONSEQUENTLY, ON JANUARY 26 OF THIS YEAR, I INTRODUCED H.R. 4664. THIS BILL WOULD AMEND THE EXPORT ADMINISTRATION ACT SO AS TO PROHIBIT THE EXPORTATION OF FRESH WATER IN BULK BY TANKER FROM A NAVIGABLE WATERWAY OF THE UNITED STATES, EXCEPT PURSUANT TO A FEDERALLY GRANTED LICENSE. UNDER THE PROVISIONS OF MY BILL THE SECRETARY OF COMMERCE (AFTER CONSULTATION WITH THE SECRETARY OF TRANSPORTATION) IS AUTHORIZED TO GRANT SUCH A LICENSE REGARDING SPECIFIED AMOUNTS OF WATER. THE BILL FURTHER REQUIRES THE ISSUANCE OF FEDERAL REGULATIONS GOVERNING THE ISSUANCE OF SUCH LICENSES AND MANDATES THAT THE AFFECTED STATES AND UNITS OF LOCAL GOVERNMENT CONCUR IN THE ISSUANCE OF THE PARTICULAR LICENSE INVOLVED. FURTHERMORE, AN AFFECTED STATE

OR LOCAL UNIT OF GOVERNMENT MUST RECEIVE APPROPRIATE REIMBURSEMENT FOR ANY WATER EXPORTED UNDER THE LICENSE. OF COURSE, THE ISSUANCE OF A LICENSE IS DISCRETIONARY AND COULD BE DENIED BY FEDERAL OFFICIALS.

MR. CHAIRMAN, THIS APPROACH SEEMS EMINENTLY FAIR TO ME. I DO NOT BELIEVE THAT PRIVATE ENTITIES SHOULD BE FREE TO TAKE ADVANTAGE OF A NATURAL RESOURCE OF THE PEOPLE OF THE UNITED STATES WITHOUT SOMEHOW BEING LEGALLY AND FINANCIALLY RESPONSIBLE FOR SUCH AN ACTION. AS YOU KNOW, MR. CHAIRMAN, FOUR MUNICIPALITIES IN THE HUDSON VALLEY GET THEIR DRINKING WATER DIRECTLY FROM THE HUDSON RIVER. TO ALLOW TANKERS TO TAKE SIX MILLION GALLONS OF FRESH WATER WITHOUT ANY FORM OF REMUNERATION IS A BLATANTLY UNFAIR AND INEQUITABLE SITUATION. EVEN IF LEGISLATION IS PASSED BY THE NEW YORK LEGISLATURE, CONGRESS SHOULD STILL VIEW THIS AS A POTENTIAL NATIONAL PROBLEM.

AGAIN, I WANT TO COMMEND YOU, MR. CHAIRMAN, AND THE OTHER MEMBERS OF THIS COMMITTEE FOR YOUR STRONG INTEREST IN THIS ISSUE. IN PARTICULAR, I WANT TO AGAIN THANK YOU AND SENATOR MOYNIHAN FOR INTRODUCING THIS LEGISLATION (S.2239) IN THE SENATE. I KNOW THAT WE WILL CONTINUE TO WORK TOGETHER TO PROTECT THE NATURAL RESOURCES OF THE STATE OF NEW YORK.

HISTORY OF THE EPISODE

Representative FISH. At the outset I would give some of the history of the episode. There are just a few points I'd like to highlight.

Once the matter did come to light, as the Senator said, because of the Hudson River Fishermen's Association, an investigation was undertaken involving regional representatives of the Coast Guard, the Federal Environmental Protection Agency, the New York State DEC, and that latter investigation determined that Exxon did not have the required State permit either for dumping or taking.

What we discovered was that existing Federal laws dealt with the problems of pollution and navigation safety. Those were covered by more than one statute; but there was this void as far as the taking of fresh water, drinking water, from navigable waterways for commercial purposes. So this is what this legislation attempts to address.

It uses the vehicle of the Export Administration Act partly because that measure is yet to go through the mill of the Senate. It is an appropriate vehicle but it is also an available vehicle which doesn't necessarily coincide with our wishes all the time.

So that's what brings us to this point. I think the legislation that's been introduced and sponsored by my colleagues and myself in the House, H.R. 4664 is identical to the version that our two Senators from New York have introduced.

I think the approach is fair because I don't believe that a private entity should be free to take advantage of a natural resource without compensation. There are four municipalities in the Hudson River Valley that get their drinking water directly from the Hudson River. To allow tankers to take 6 million gallons of fresh water without any form of remuneration seems to me blatantly unfair and, so, the recompense to the municipalities is in this bill.

It's not just a question of licensing by the Secretary of Commerce and the Secretary of Transportation, but we have to have required State and local consent to the taking and payment to the municipalities.

The Senator made reference to the settlement. One settlement is $250,000 each to organizations directly concerned with the Hudson River and $1½ million to the State of New York. That second was only announced yesterday morning and the attorney general will be telling you more about that, but I think it's appropriate at this time to say that——

Senator D'AMATO. It's interesting what hearings can accomplish.

Representative FISH. I think that this settlement in no way affects the need for this legislation. First of all, it involves 1 State and our bill would concern the other 49 States. Second, in the settlement with the State of New York, Exxon repeated what it had said earlier, that self-imposed ban on the taking of fresh water from the Hudson River would only last to the end of June 1985 and so I think that does allow us time for the State of New York and the Federal Government to take appropriate action to see that this is cleared up not only in our backyard but throughout the country.

Senator D'AMATO. Congressman Ottinger.

STATEMENT OF RICHARD L. OTTINGER, U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Representative OTTINGER. Thank you, Senator D'Amato. I, too, would like to congratulate you for moving on this legislation. I am here to support H.R. 4664 and S. 2239. I join my colleagues of the Hudson Valley congressional delegation. We are usually united and I'm pleased to join my colleagues from the Hudson Valley today. I join them in paying tribute to the Hudson River Fishermen's Association with which I've worked for many years and they have done a steady job in alerting the public and public officials to problems that occur on the Hudson River that we might have to address.

I also would like to submit my statement for the record. I would point out that clean water is an increasingly valuable natural resource. Indeed, it may well be the critical environmental problem of the coming decade. We in New York pay millions of dollars for the cleanup of water of the Hudson River and a fact that ought to be considered here with respect to compensation is that a company like Exxon ought not to be allowed to take that water and not pay its fair share for the tremendous cost required to clean the river. Indeed, we are still very much involved in that with respect to the PCB contamination with legislation and administrative action by EPA which is going to require millions of dollars to take care of the PCP contamination in the river, so striped bass which many of us fought so hard to get back in the Hudson River can succeed. At the present time striped bass is becoming more prolific today and valuable commercial fishery resources can't be used today because of the Hudson River contamination.

Other matters that I think are worthy of your consideration is that pollution is involved. The tankers were pouring thousands of gallons of sea water in the Hudson River. Salt water has a different density and temperature than fresh water and in an estuarian system like the Hudson temperature of the water and salinity are critical to the nursery and development of different species of plant and animal life. Commercial striped bass fishing in the Eastern United States is a $20 million a year industry and most of those bass spend their first winter in the Hudson River. That includes the Chesapeake Bay area and the entire eastern seaboard. The placement of that much salt in the fresh water of the Hudson River would have a disastrous impact on the life cycle of the striped bass as well as other species.

Second, there was uncontroverted evidence that pollution included dumping of petrochemicals. That evidence collected by the Hudson River Fishermen's Association showed that discharges by the tankers contained chemicals which were all known carcinogens. It seems to me that we have to enable our municipal jurisdictions to protect against that kind of dangerous pollution.

So I just want to congratulate you for your attention to this bill and hope we can get it through in both Houses with dispatch to rectify a very serious situation.

[The complete statement follows:]

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CONGRESSMAN RICHARD L. OTTINGER

JUNE 7, 1984

TESTIMONY BEFORE

SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY

OF THE

UNITED STATES SENATE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

H. R. 4664/S. 2239

TO AMEND THE EXPORT ADMINISTRATION ACT TO PROHIBIT THE EXPORTATION OF FRESHWATER IN BULK BY TANKER

MR. CHAIRMAN. I WANT TO THANK YOU FOR ALLOWING US TO COME BEFORE YOU TODAY TO SPEAK ON THIS IMPORTANT ISSUE. THIS ISSUE INVOLVES A MULTINATIONAL CORPORATION EXPROPRIATING AMERICAN WATER FOR USE IN FOREIGN COUNTRIES WITH NO REGARD TO THE HAZARDS AND CONSEQUENCES OF THIS ACTION.

THE LEGISLATION THAT WE ARE DISCUSSING, H.R. 4664 & S. 2239, INTRODUCED BY MY COLLEAGUE IN THE HOUSE, HAMILTON FISH, JR., HAS BEEN CO-SPONSORED BY ALL THE HUDSON VALLEY CONGRESSMAN AS WELL AS THE TWO SENATORS FROM NEW YORK. THIS LEGISLATION IS VERY SIMPLE. IT WOULD PROHIBIT THE EXPORTATION BY TANKER OF FRESH WATER IN BULK FROM THE NAVIGABLE WATERS OF THE UNITED STATES UNLESS PERMITS HAVE BEEN ISSUED BY THE LOCAL JURISDICTIONS.

THE LEGISLATION IS SIMPLE, BUT THE INTENT IS CLEAR, WE MUST PROTECT OUR NATURAL RESOURCES. IT IS NOW INCREASINGLY MORE EVIDENT THAT WATER - FRESH, CLEAN, POLLUTION FREE WATER - MAY BE THE FINAL BATTLEGROUND FOR NATURAL RESOURCES. WATER IS A RESOURCE THAT WE CANNOT CONTINUE TO TAKE FOR GRANTED.

WE ARE TOLD THAT FOR THE PAST 30 YEARS EXXON CORPORATION TANKERS HAVE FREQUENTLY TRAVELED UP THE HUDSON RIVER WITH ITS HOLDS FULL OF SEA WATER CONTAMINATED WITH PETROLEUM BIPRODUCTS. AFTER DISCHARGING THE SEA WATER THE TANKERS THEN FILLED UP WITH FRESH WATER. FOR A YEAR, ENDING LAST NOVEMBER, EXXON DID THIS AT LEAST TWICE A MONTH.

THERE ARE THREE ISSUES THAT I WOULD LIKE TO ADDRESS. EACH OF WHICH , IF NOT CRIMES IN THE LEGAL SENSE, ARE CERTAINLY CRIMES AGAINST NATURE.

THE TANKERS WERE POLLUTING THE HUDSON RIVER WITH THOUSANDS OF GALLONS OF SEA WATER. THIS SALT WATER HAS A DIFFERENT DENSITY AND TEMPERATURE THAN FRESH WATER. IN AN ESTUARIAN SYSTEM, LIKE THE HUDSON, THE TEMPERATURE OF THE WATER AND THE DEGREE OF SALINITY ARE CRITICAL TO THE NURTURING AND DEVELOPMENT OF DIFFERENT SPECIES OF PLANT AND ANIMAL LIFE. COMMERCIAL STRIPPED BASS FISHING IN THE EASTERN UNITED STATES IS A $20 MILLION A YEAR INDUSTRY, AND MOST OF THOSE BASS SPEND THEIR FIRST WINTER IN THE HUDSON RIVER. THE PLACEMENT OF THAT MUCH SALT INTO THE FRESH WATER OF THE UPPER HUDSON WOULD HAVE A DISASTEROUS IMPACT ON THE LIFE CYCLE OF THE STRIPPED BASS AS WELL AS OTHER SPECIES IN THE HUDSON.

SECOND, POLLUTING OF HUDSON RIVER WITH PETRO CHEMICALS CAUSES ME GREAT CONCERN. SINCE I HAVE BEEN IN CONGRESS I HAVE TAKEN ON A NUMBER OF ENVIRONMENTAL ISSUES. BUT NONE OF THOSE HAVE BEEN AS IMPORTANT TO ME AS THE ISSUE OF CLEANING UP THE HUDSON RIVER. IT IS INCOMPREHENSIBLE TO ME THAT THIS CORPORATION HAS KNOWINGLY DISCHARGED POLLUTANTS (BOTH CHEMICALS AND SALT) INTO THE RIVER THAT WE HAVE TRIED SO HARD TO PROTECT. EVIDENCE COLLECTED BY THE HUDSON RIVER FISHERMEN'S ASSOCIATION SHOWS QUITE CLEARLY THAT THE SALT WATER DISCHARGED BY THE TANKERS CONTAINED THE CHEMICALS BENZENE, TOLUENE AND ZYLENE -KNOWN CARCINOGENS. THERE IS NO REASON FOR THESE CANCER CAUSING AGENTS TO HAVE BEEN INTRODUCED INTO THE WATER OF THE HUDSON AND POSSIBLY INTO THE FOOD CHAIN TO BE INGESTED BY HUMANS.

FINALLY, I BELIEVE THAT THE TAKING OF FRESH WATER BY TANKERS FROM THE INTERIOR OF THE UNITED STATES FOR SALE OR USE ABROAD CONSTITUTES A THEFT BY THIS LARGE MULTINATIONAL CORPORATION. THE RESOURCES WITHIN THE UNITED STATES ARE THE PROPERTY OF THE AMERICAN PEOPLE. WE WOULD NOT ALLOW THE ISLAND OF ARUBA TO TAKE TREES FROM OUR NATIONAL FORESTS, NOR WOULD WE ALLOW ENGLAND TO DUMP TOXIC WASTES OFF THE COAST OF FLORIDA, NEITHER SHOULD WE PERMIT THE TAKING OF THIS NATURAL RESOURCE WITHOUT JUST COMPENSATION. THE PEOPLE OF THE UNITED STATES AND THE PEOPLE OF THE STATE OF NEW YORK HAVE MADE IT KNOWN THAT THEY WANT THE HUDSON RIVER TO BE CLEAN. MILLIONS OF TAX DOLLARS HAVE BEEN SPENT DOING JUST THAT. WHAT GIVES ANY COMPANY THE RIGHT TO STEAL THIS RESOURCE THAT WE HAVE SPENT SO MUCH MONEY ON KEEPING CLEAN?

THIS LEGISLATION WOULD EMPOWER THE AFFECTED MUNICIPAL JURISDICTIONS TO PUT AN END TO THIS PRACTICE AND PROTECT THE HUDSON RIVER AS WELL AS OTHER FRESH WATER SYSTEMS IN THIS COUNTRY FROM THIS TYPE OF UNNECESSARY ENVIRONMENTAL DEGRADATION. I URGE THE MEMBERS OF THE SUBCOMMITTEE TO GIVE THIS LEGISLATION CAREFUL CONSIDERATION AND APPROVAL.

Senator D'AMATO. Thank you very much.
Congressman Gilman.

STATEMENT OF BENJAMIN A. GILMAN, U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Representative GILMAN. Thank you, Senator.

We thank you for bringing this measure before your subcommittee and we thank Senator Moynihan for his support in the other body and I want to thank the entire committee for giving to this measure the significance that it deserves. It has national implications.

I was pleased to join the gentlemen from New York, Mr. Fish and Mr. Ottinger, as a cosponsor to this legislation—in our House, it's H.R. 4664—when we were informed of the actions being taken by the Exxon Co. in our Hudson Valley region.

Our legislation, as you know, prohibits the exportation of fresh water in bulk by tankers. I was shocked to learn that contaminated saltwater had been dumped by a tanker in the Hudson River, and moreover, that our fresh water—some 3 million tons of it—had been substituted and was going to be sold for commercial gain in the Caribbean, and was also being used by the Exxon refinery in Bayonne, NJ. Investigations later showed that this had been the practice for the past several years, leading us to suspect that Exxon may not have been the only culprits in violation of the established laws.

As my colleague, Mr. Fish, noted, this situation has now been settled out of court, but I can't emphasize enough how much anguish this has caused the citizens of our Hudson Valley region. As you well know, Mr. Chairman, the mid-Hudson Valley is one of the most beautiful regions of our State, and we all take great pride in its natural wonders. Millions of dollars have been spent over the years in a concerted effort to try to clean up the Hudson River. We are all engaged in the cleanup of the PCB's at the present time, and in this effort those in the mid-Hudson Valley have been zealously joined by their brethren in New York City and elsewhere along the banks of the river. I find it inconceivable that anyone would so callously disregard the many efforts the people of this State have been making to ensure that the Hudson River remain as clean and unpolluted as possible. But, since such actions did occur, and over a period of years, it causes us to question whether there may be similar situations on other inland waterways across this country.

At the same time that my colleagues were introducing this legislation, President Reagan, in his State of the Union Address, announced a massive effort to clean up the Chesapeake Bay in Maryland, a body of water sorely neglected for a lengthy period of time. I am certain that there are other inland waterways slated for cleanup, but was surprised to learn that while there are some good State laws protecting our States' waterways, there are no Federal laws to deter those who desire to despoil our beautiful natural resources for their own commercial gain, as in this case. It is for these reasons that we have proposed this legislation and why it is so significant.

Years ago, crimes against our environment were often committed out of ignorance. Today, however, the public is increasingly conscious of the need to preserve and protect our magnificent heritage. The piracy of fresh water, and its substitution in our rivers by contaminated, untreated substitutes, is a crime committed against an innocent public. This threat to unsuspecting municipalities across our Nation needs to be addressed on a national scale. I applaud all efforts taken to combat this reprehensible practice, and look forward to working with you and our colleagues in the House in enacting legislation to rectify these excesses.

Thank you, Mr. Chairman.

[The complete statement follows:]

TESTIMONY OF THE

HONORABLE BENJAMIN A. GILMAN

MR. CHAIRMAN, I WANT TO THANK YOU AND THE OTHER DISTINGUISHED MEMBERS OF YOUR SUBCOMMITTEE FOR TAKING A LEADERSHIP ROLE IN THIS IMPORTANT ISSUE, THE SIGNIFICANCE OF WHICH BEARS NOT ONLY LOCAL BUT NATIONAL IMPLICATIONS.

I WAS PLEASED TO JOIN THE GENTLEMEN FROM NEW YORK, MR. FISH AND MR. OTTINGER AS A COSPONSOR OF THEIR LEGISLATION, SENATOR, WHEN I WAS INFORMED OF THE ACTIONS BEING TAKEN BY EXXON CORPORATION IN OUR HUDSON VALLEY REGION. I WAS SHOCKED TO LEARN THAT CONTAMINATED SALTWATER HAD BEEN DUMPED BY A TANKER IN THE HUDSON RIVER, AND MOREOVER, THAT OUR FRESHWATER HAD BEEN SUBSTITUTED AND WAS GOING TO BE SOLD FOR COMMERCIAL GAIN IN THE CARIBBEAN. INVESTIGATIONS LATER SHOWED THAT THIS HAD BEEN THE PRACTICE FOR THE PAST SEVERAL YEARS, LEADING US TO SUSPECT THAT EXXON CORPORATION MAY NOT HAVE BEEN THE ONLY CULPRITS IN VIOLATION OF STATE LAW.

AS CONGRESSMAN FISH STATED, THIS PARTICULAR SITUATION HAS NOW BEEN RESOLVED OUT OF COURT. BUT, I CANNOT EMPHASIZE ENOUGH HOW MUCH ANGUISH THIS HAS CAUSED THE CITIZENS OF OUR REGION. AS YOU WELL KNOW, MR. CHAIRMAN, THE MID HUDSON VALLEY IS ONE OF THE MOST BEAUTIFUL REGIONS OF OUR STATE, AND WE ALL TAKE GREAT PRIDE IN ITS NATURAL, GOD-GIVEN WONDERS. MILLIONS OF DOLLARS HAVE BEEN SPENT OVER THE YEARS IN A CONCERTED EFFORT TO CLEAN UP THE HUDSON RIVER, AND IN THIS EFFORT THOSE IN THE MID HUDSON VALLEY HAVE BEEN ZEALOUSLY JOINED BY THEIR BRETHREN IN NEW YORK CITY AND ELSEWHERE ALONG THE BANKS OF THE RIVER. I FIND IT INCONCEIVABLE THAT ANYONE WOULD SO CALLOUSLY DISREGARD THE

MANY EFFORTS OF THE PEOPLE OF THIS STATE TO ENSURE THAT THE HUDSON RIVER REMAIN AS CLEAN AND UNPOLLUTED AS POSSIBLE. BUT, SINCE SUCH ACTIONS DID OCCUR, AND OVER A PERIOD OF YEARS, I WONDER WHETHER THERE ARE SIMILAR SITUATIONS ON OTHER INLAND WATERWAYS ACROSS THIS COUNTRY.

AT THE SAME TIME THAT MY COLLEAGUES WERE INTRODUCING THIS LEGISLATION, PRESIDENT REAGAN, IN HIS STATE OF THE UNION ADDRESS, ANNOUNCED A MASSIVE EFFORT TO CLEAN UP THE CHESAPEAKE BAY IN MARYLAND, A BODY OF WATER SORELY NEGLECTED FOR A LONG TIME. I AM CERTAIN THAT THERE ARE OTHER INLAND WATERWAYS SLATED FOR CLEAN-UP, BUT WAS SURPRISED TO LEARN THAT THERE ARE NO FEDERAL LAWS TO DETER THOSE WHO DESIRE TO DESPOIL OUR BEAUTIFUL NATURAL RESOURCES FOR THEIR OWN COMMERCIAL GAIN AS IN THE CASE WE HAVE JUST DISCUSSED. IT IS FOR THESE REASONS THAT I HAVE SUPPORTED H.R. 4664.

YEARS AGO, CRIMES AGAINST OUR ENVIRONMENT WERE OFTEN COMMITTED OUT OF IGNORANCE. TODAY, HOWEVER, THE PUBLIC IS INCREASINGLY CONSCIOUS OF THE NEED TO PRESERVE AND PROTECT OUR MAGNIFICENT HERITAGE. THE PIRACY OF FRESHWATER, AND ITS SUBSTITUTION IN OUR RIVERS BY CONTAMINATED, UNTREATED SUBSTITUTES, IS A CRIME COMMITTED AGAINST AN INNOCENT PUBLIC. THIS THREAT TO UNSUSPECTING MUNICIPALITIES ACROSS OUR NATION NEEDS TO BE ADDRESSED ON A NATIONAL SCALE. I APPLAUD ALL EFFORTS TAKEN TO COMBAT THIS REPREHENSIBLE PRACTICE, AND LOOK FORWARD TO WORKING WITH YOU AND OUR COLLEAGUES IN ENACTING LEGISLATION TO RECTIFY THESE EXCESSES.

PROPER AMOUNT OF WATER FOR SHIPS

Senator D'AMATO. Thank you very much, Mr. Congressman.

I wonder if I might ask Senator Moynihan and anyone else who might want to comment to make one observation with respect to the legislation. Should we possibly include a provision that would allow for the onboard usage of fresh water taking from America's rivers? It is not the intention, obviously, of yourself, Senator Moynihan and your colleagues in the House, to curtail the use of fresh drinking water when the crew comes in and——

Senator MOYNIHAN. Mr. Chairman, the American Institute of Merchant Shipping has proposed an amendment which would do two things. One, it would enable a ship to take on fresh water as ballast and, second, take on fresh water for onboard usage as drinking water, steam generation, and things like that. That's necessary.

The point to be made, sir, is that that does not involve the discharge of water already brought in, already onboard. Our friends from the Hudson Valley delegation point out that in the case of Exxon they were dumping warm salt water with a fair mix of chemicals into the Hudson River, doing it no good. Anyone concerned with shipping knows that a ship that comes up to the Port of Albany and discharges its cargo must take aboard a sufficient amount of ballast to get back down. That's a fair use of fresh water and we're not against that. We would like to see more ships in Albany.

Senator D'AMATO. So we would make that technical amendment with those changes to spell that out quite clearly?

Senator MOYNIHAN. I would hope so, Mr. Chairman.

Representative FISH. Mr. Chairman, if I could respond to your question about onboard use of water, by dividing it, we used the term "in bulk" in two or three places in the bill because I understood it was a term of art already in the law that distinguishes large quantities of water from, say, drinking water aboard ship. So I think that part of the problem is resolved.

But to get to ballast—and I'm not sure I know how much water constitutes the necessary ballast for safe navigation purposes. I recognize the importance of it. I do think it would be preferable to have some language in the legislation that would make it clear that we either were or were not requiring licenses for a certain amount of ballast to use for safe navigation.

I wouldn't like to leave it so broad that we condone the same practice we're trying to reach.

Senator D'AMATO. Sure.

Representative FISH. But I think it could be properly worded so that it would be an amount limited to what would be necessary for safe navigation.

The other way of handling this, of course, is through the licensing process, but it would be preferable to have it in the legislation since this will be the model for, hopefully, State action as well.

Senator D'AMATO. I'm sure our staffs can work on the appropriate language that would guarantee that we're talking about a sufficient quantity of water for the use of the ship, its crew, and to pro-

vide for the ship to safely operate, as opposed to the exportation or using this as a loophole.

Does anyone else want to comment on this? If not, let me thank Senator Moynihan and my colleagues from the House, all from New York, who are here and congratulate you for not only your presentation but your work and your efforts in this area. We look forward, Senator Moynihan and I, to working together with you to see to it that this necessary legislation is enacted. Thank you very much.

Our next panel are State representatives. Although the litigation question has been resolved, we still have a representative from the New York State Attorney General's Office, Mr. James Sevinsky, chief of the bureau of environmental protection; and Mr. Nicholas Robinson, deputy commissioner and general counsel for the New York State Department of Environmental Conservation [DEC].

STATEMENT OF JAMES A. SEVINSKY, ASSISTANT ATTORNEY GENERAL, ENVIRONMENTAL PROTECTION BUREAU, DEPARTMENT OF LAW, ALBANY, NY

Mr. SEVINSKY. Thank you, Senator D'Amato. I am James Sevinsky from the attorney general's office. I'd like to thank you for holding these hearings and focusing much needed attention on the need for legislative action in this area and I'd also like to convey the attorney general's regrets that he was unable to make this hearing.

LAWS ON WATER

Fresh water is one of the Nation's most critical natural resources and one of New York's most valuable assets.

In order to protect both the quantity and the quality of our water, the State legislature has enacted statutes which regulate the withdrawal of New York waters and the discharge of pollutants into those waters. Article 15 of the environmental conservation law requires a permit for withdrawal and transportation of water outside the State, and article 17 requires a permit for discharge of pollutants and wastes into the State's waters.

The citizens of New York were thus outraged when they learned, through the efforts of the Hudson River Fishermen's Association, that Exxon had for years been taking large quantities of fresh water from the Hudson River after dumping salt water containing contaminants such as oil, chemicals, and other pollutants into the Hudson, which is a major source of drinking water for the citizens of downstate New York.

In late 1983, the State, together with the department of environmental conservation, the U.S. attorney's office, and the Hudson River Fishermen's Association, began discussions with Exxon as to what actions Exxon might take to compensate the people of New York State and thereby avoid litigation. While the United States and the Hudson River Fishermen's Association settled with Exxon several months later before the litigation was commenced—this was in exchange for the company's contribution of $500,000 to the Hudson River Fishermen's Association Riverkeeper Fund and the Open Space Institute—the State was unable to reach a resolution

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with Exxon at that time that was satisfactory to the Governor.

At the request of Governor Cuomo and the department of environmental conservation, we filed suit on April 25, 1984, against the company on behalf of the State's citizens, seeking statutory penalties under the environmental conservation law and also alleging that Exxon was unjustly enriched by its failure to compensate New York for the fresh water taken. This unjust enrichment came about in two ways. First, by using New York's water in its Aruba and New Jersey refineries, Exxon was able to reduce its manufacturing costs. In addition, by providing New York's water to the Government of Aruba, Exxon received a tax abatement and payments from Aruba. In short, Exxon saved money at the expense of the people of the State of New York by taking water from the Hudson. Thus, New York also sought restitution for the value of its waters.

Two days ago, as was noted earlier, the State signed a settlement agreement with Exxon which obligates the company to pay $1.5 million to the State. The settlement also prohibits Exxon from removing water from the Hudson River until June 30, 1985, or substantially the end of our next State legislative session, or until such time as the State legislature enacts clarifying legislation regarding taking water from New York, whichever comes first. After June 30, 1985, in the terms of the settlement, if Exxon decides to resume taking water, it has to give notice to the State and further notice 30 days in advance of any intended specific water withdrawal. This notice must inform New York of the amount of water involved, the approximate location, and other relevant information. The State reserves its right to go back to court if Exxon does resume its activities. The settlement provides substantial payment to the State and provides compensation for Exxon's abuse of New York's precious water resources. We believe it is a strong settlement that involves a recognition by Exxon that it must provide the State with the information it needs to make intelligent decisions about the use of its resources.

Proposed legislation designed to address these issues and clarify New York's law already has been introduced into the State assembly. The State legislation would impose a permit system applicable to withdrawal of water not only from the Hudson but from all the State's water resources. Before granting a permit, DEC would be required to ascertain the probable effect of the withdrawal of water on the health, safety, and welfare of the people of the State and the natural resources of the State. Further, New York's proposed legislation would expressly apply the State permit system, which we believe applies now, to international transfers of New York water. In our view, the pending State proposal constitutes an appropriate exercise of New York's police power to regulate use of its natural resources.

REVIEW OF S. 2239

It is against this background of New York's extensive efforts to check uncontrolled taking of Hudson River waters that we reviewed this bill, S. 2239, which would require that a license be ob-

tained from the Department of Commerce before water could be removed from the United States and exported in bulk by tanker. The Senate bill authorizes but does not mandate the promulgation of regulations by the Secretary of Commerce providing for the granting of licenses. Further, the bill states that such regulations may provide for the issuance of a license if the affected State and local governments concur in the granting of a license and receive appropriate reimbursement for the water exported under the license. It does not require State concurrence.

We cannot support the proposed legislation in its present form because it may be interpreted as divesting the States of the power to regulate withdrawal of fresh water and placing such power exclusively in the hands of the Federal Government. Indeed, by seeking to amend the Export Administration Act of 1979, the primary purpose of which is to restrict the export of scarce goods and military technology to unfriendly nations, the bill treats fresh water more like a commodity than like the precious natural resource that it is.

Further, the bill would empower the Department of Commerce, an agency with little or no expertise in environmental issues, to dictate the input States will have in the determination to issue a license for taking of natural resources, and the appropriate reimbursement to States for the taking. Federal legislation of this sort, while not in the exact form of this bill, should at a minimum explicitly provide that States are authorized to enact more stringent legislation and regulations directed. Any Federal legislation that establishes minimum licensing requirements must reserve to the States their traditional role of regulating their natural resources. Such legislation would protect resources not clearly within the jurisdiction of any one State—like the Mississippi—but allow States like New York to protect resources within their boundaries—like the portions of the Hudson River that were affected by the Exxon practice.

We also understand that the American Institute of Merchant Shipping has stated that it will not support the bill unless it is made clear that the term "export" does not address fresh water removed from the United States to be used for ballast or onboard purposes. Should the subcommittee decide to address these concerns, it will be important to distinguish between ballast and cargo in the bill, since tankers can sail quite a ways up a river such as the Hudson, offload cargo, take on fresh water ballast, and then ultimately sell such ballast as cargo. This loophole would tend to defeat the purposes of the bill.

In sum, while the State and Federal Governments have focused much attention in recent years on water quality, it is now time to focus as well on water management and distribution. These hearings on your proposed bill are a very important first step. But we fear that the proposed bill in its present form may do more to jeopardize the authority of the States to perform their rightful role of protecting natural resources than it will to control unregulated taking of fresh water. Thank you.

[The complete statement follows:]

TESTIMONY ON BEHALF OF NEW YORK

ATTORNEY GENERAL ROBERT ABRAMS

BEFORE THE SENATE SUBCOMMITTEE ON INTERNATIONAL
FINANCE AND MONETARY POLICY OF THE SENATE
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

JUNE 7, 1984

Good afternoon. Thank you for the opportunity to comment on Senate Bill No. 2239, which seeks to prohibit the export of fresh water by tanker from the United States without a federal license.

As the members of this subcommittee are well aware, fresh water is one of the nation's most critical natural resources. Indeed, in New York abundant water for drinking, fishing and transportation early made our State prosper. Canal development and later water power furthered the State's commerce and development. Fresh water continues to be one of New York's most valuable assets.

In order to protect both the quantity and the quality of our water, the New York State Legislature has enacted statutes which regulate the withdrawal of New York waters and the discharge of pollutants into those waters. Article 15 of the Environmental

Conservation Law (ECL) requires a permit for withdrawal and transportation of water outside the State, and Article 17 requires a permit for discharge of pollutants and wastes into the State's waters.

The citizens of New York were thus outraged when they learned, through the efforts of the Hudson River Fishermen's Association and the State Department of Environmental Conservation, that the Exxon Corporation for years had been taking large quantities of fresh water from the Hudson River watershed after dumping saltwater containing oil, chemicals and other pollutants into the Hudson, a major source of drinking water for the citizens of downstate New York. Most of the water withdrawn by Exxon, estimated to total over 3 million tons, was delivered to the Caribbean nation of Aruba, where Exxon utilized it in its refining and industrial facility. In addition, during 1980 and 1981, Exxon transported approximately 125,000 tons of Hudson River water to its refinery in Bayonne, New Jersey, at a time when that State imposed restrictions on the use of

water because of a severe drought. It was New York's position that Exxon's actions violated State and federal laws and could not go unchallenged.

In late 1983, the State, together with the Department of Environmental Conservation, the U.S. Attorney's Office and the Hudson River Fisherman's Association (HRFA), began discussions with Exxon as to what actions Exxon might take to compensate the people of New York State and thereby avoid litigation. While the United States and HRFA settled with Exxon several months later, agreeing not to pursue legal claims against Exxon in exchange for the company's contribution of $500,000 to HRFA's Riverkeeper Fund and the Open Space Institute, the State was unable to reach a resolution with Exxon at that time that was satisfactory to the Governor.

At the request of Governor Cuomo and DEC, we filed suit on April 25, 1984 against the company on behalf of the State's citizens, seeking statutory penalties under Articles 15 and 17 of the ECL because of Exxon's failure to obtain the

requisite discharge and water withdrawal permits. The suit also alleged that Exxon was unjustly enriched by its failure to compensate New York for the fresh water taken. This unjust enrichment came about in two ways. First, by using New York's water in its Aruba and New Jersey refineries Exxon was able to reduce its manufacturing costs. In addition, by providing New York's water to the government of Aruba, Exxon received a tax abatement from Aruba. In sum, Exxon saved money at the expense of the people of the State of New York by taking water from the Hudson. Thus, New York also sought restitution for the value of its waters.

Two days ago, on June 5, 1984, the State signed a settlement with Exxon which obligates the company to pay $1.5 million to the State. The settlement also prohibits Exxon from removing water from the Hudson River until June 30, 1985, or until such time as the State Legislature enacts clarifying legislation regarding taking water from New York, whichever comes first. After June 30, 1985, if no legislation is enacted, Exxon must give

notice to the State if it decides to resume taking water, and further notice 30 days in advance of any intended water withdrawal. This notice must inform New York of the amount of water involved, the approximate location, and other relevant information. Furthermore, the State reserves its right to go back to court if Exxon does resume its activities. The settlement provides substantial payment to the State and provides compensation for Exxon's abuse of New York's precious water resources. It is a strong settlement that involves a recognition by Exxon that it must provide the State with the information it needs to make intelligent decisions about the use of its resources.

Proposed legislation designed to address such issues and clarify New York's law already has been introduced into the State Assembly. The State legislation would impose a permit system applicable to withdrawal of water not only from the Hudson, but from all the State's water resources. Before granting a permit, DEC would be required to ascertain the probable effect of the

withdrawal of water on the health, safety and welfare of the people of the State and the natural resources of the State. Further, New York's proposed legislation would expressly apply the State permit system to international transfers of New York water. In our view, the pending State proposal constitutes an appropriate exercise of New York's police power to regulate use of its natural resources.

It is against this background of New York's extensive efforts to check uncontrolled taking of Hudson River waters that we reviewed Senate Bill No. 2239, which would require that a license be obtained from the Department of Commerce before water could be removed from the United States and exported in bulk by tanker. The Senate bill authorizes but does not mandate, the promulgation of regulations by the Secretary of Commerce providing for the granting of licenses. Further, the bill states that such regulations may provide for the issuance of a license if the affected states and local governments concur in the

granting of a license and receive appropriate reimbursement for the water exported under the license. It does not require State concurrence.

I cannot support the proposed legislation in its present form because it may be interpreted as divesting the states of the power to regulate withdrawal of fresh water and placing such power exclusively in the hands of the federal government. Indeed, by seeking to amend the Export Administration Act of 1979, the primary purpose of which is to restrict the export of scarce goods and military technology to unfriendly nations, the bill treats fresh water more like a commodity than like the precious natural resource that it is.

Further, the bill would empower the Department of Commerce, an agency with little or no expertise in environmental issues, to dictate the input states will have in the determination to issue a license for taking of natural resources, and the "appropriate reimbursement" to states for the taking. Federal legislation of this sort should <u>at a minimum</u> explicitly provide that states are

authorized to enact more stringent legislation and regulations directed at both interstate and international transfers of water. Any federal legislation should establish minimum licensing requirements, but expressly reserve to the states their traditional role of regulating their natural resources. Such legislation would protect resources not clearly within the jurisdiction of any one state - like the Mississippi -- but allow states like New York to protect resources within their boundaries -- like the upper portions of the Hudson.

My staff has been informed that the American Institute of Merchant Shipping has stated that it will not support the bill unless it is made clear that the term "export" does not address fresh water removed from the United States to be used for ballast or on-board purposes. Should the subcommittee decide to address the Institute's concerns, it will be important to distinguish between "ballast" and "cargo" in the bill, since tankers can sail quite a ways up a river such as the Hudson, off-load cargo, take on fresh water ballast, and then ultimately sell such "ballast"

as cargo. This loophole would tend to defeat the purposes of the bill.

In sum, while the state and federal governments have focused much attention in recent years on water quality, it is now time to focus as well on water management and distribution. These hearings are an important first step. But we fear that the proposed bill may do more to jeopardize the authority of the States to perform their rightful role of protecting natural resources then it will to control unregulated taking of fresh water.

Senator D'AMATO. Mr. Robinson.

STATEMENT OF NICHOLAS A. ROBINSON, DEPUTY COMMISSIONER AND GENERAL COUNSEL, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, STATE OF NEW YORK

Mr. ROBINSON. Senator, I regret that Hank Williams can't be here today. He wanted me to extend his special greetings to you and comment on the good positive working relationship he's had with you.

Senator D'AMATO. Please convey my best wishes and highest regards to the commissioner. He's done an outstanding job.

Mr. ROBINSON. I also want to commend you for convening this hearing. I know of your great concern for water quality in the area of your home on Long Island, the concern for the water in the island's aquifers is, of course, at the highest level of public awareness and so, also, this concern for water in the Hudson shows an awareness of the need for water protection throughout our State and the Nation.

I would like, if I may, sir, to submit my statement for the record and not read it in its entirety.

Senator D'AMATO. It will be accepted as if read in its entirety.

Mr. ROBINSON. If I may, I'd like to provide the committee with copies of the actual settlement agreement that the State of New York has negotiated with the Exxon Co.

Senator D'AMATO. They will also be made a part of the record.

Mr. ROBINSON. And Governor Cuomo's statement in recognition of that settlement agreement he issued yesterday.

Succintly, the department has two points to emphasize. Mr. Sevinsky has ably described the litigation. I would point out that our

congressional delegation has accurately pointed out to this committee the great concern of the general public, especially in the mid-Hudson area, about the practice that Exxon had engaged in in taking water.

CLEANUP OF HUDSON RIVER COST MILLIONS

Ever since Governor Rockefeller's seminal program, called the Pure Water Program, which preceded the Clean Water Act, when the State of New York voluntarily invested millions of dollars in cleaning up the Hudson, we have been making this river valuable again. Obviously, we care a great deal about it and have for decades. John Burroughs lived near the very site where this water taking took place. Most New Yorkers have traversed the Hudson Valley. I swim in the Hudson every summer. It's a marvelous river and all of us value it highly.

The New York State Legislature has before it draft legislation which it is considering to deal with aspects of this question of water lifting, as it's come to be called. I'm not sure and I've tried hard to find examples of water lifting in other jurisdictions, but I'm not sure that water lifting is a national problem yet. We know it takes place in the heart of the Hudson Valley. I have conferred with officials in Environment Canada and from the Ministry of Environment from Ontario and we know of no practice presently on the St. Lawrence. As you know, water does not respect international boundary lines. It obviously flows in its own channel. And I think before this bill should go much farther, some consideration should be had of the interest in water of the Provinces of Ontario and Quebec. They have the same water regime very much at the provincial level that we have at the State level.

I cannot find examples of water lifting from the Columbia, which is another river deep enough to take this where the water is pure. I doubt that water from the Delaware could be taken without causing complications with the very delicate interstate compact the Delaware River Basin States are involved in. Therefore, it's the view of the department of environmental conservation that it might be useful to permit the State of New York to develop legislation to try to see how to regulate water lifting.

There is enough water in the Hudson that might be exported if a careful regime for that were put in place. We are especially concerned about the impact on the water quality. Under a case that just came down in the Ninth Circuit Court of Appeals, called *Chevron USA* v. *Hammond,* 726 Federal Reporter 2d, page 483, the court made it very clear that the State of Alaska had the right to regulate discharges into territorial State waters in order to protect the fragile ecology of that area.

We would not want Federal legislation which might interfere with New York being able to protect its own resource in the same way that Alaska has done.

Finally, I would like to observe that, unlike many areas along our territorial waters, the Hudson, is at a point where this water lifting is taking place, a relatively narrow river. New York has just put in place its Coastal Zone Management Act and will be regulating the land uses on either side of the river, including the six—

well, seven if you count the city of New York's Chelsea water station—seven different water supplies. We view the State of New York as having an ultimate land-use, control question here which is a State issue rather than a Federal one to regulate this water export.

Thank you very much, sir. We again commend you for holding this hearing. It was very helpful to all of us in New York in bringing about a resolution of our outstanding dispute and will guide us in the future.

[The complete statement, settlement agreement with Exxon, and Governor Cuomo's statement follow:]

Statement of

NICHOLAS A. ROBINSON

Deputy Commissioner and General Counsel

of the

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

of the

State of New York

Before the

U. S. SENATE

SUBCOMMITTEE ON INTERNATIONAL FINANCE & MONETARY POLICY,

COMMITTEE ON BANKING, HOUSING & URBAN AFFAIRS

June 7, 1984

Room SD-538, Dirksen Senate Office Building

Washington, D.C.

Hon. John Heinz, U. S. Senator
Chairman, Subcommittee on
International Finance & Monetary Policy

Mr. Chairman:

It is an honor to appear before you today to testify on behalf of New York's Environmental Conservation Commissioner Henry G. Williams to represent the New York State Department of Environmental Conservation. Commissioner Williams regrets that he cannot be with you personally today. He has asked me to present his view and the considered judgment of the Department of Environmental Conservation with regard to S.2239, a bill to amend the Export Administration Act of 1979 to prohibit the exportation of fresh water in bulk by tanker.

The Department of Environmental Conservation ("DEC") has a keen interest in S.2239. DEC is an integrated natural resource and environmental protection agency. It is analogous within the State to a combined Interior Department-Environmental Protection Agency-Forest Service at the federal level. The Department's Water Division directs State programs for both water supply and water quality.

For these reasons, DEC has closely concerned itself with the practice of Exxon, and to lesser extent Texaco, Chevron and others in bringing ocean going tankers up the Hudson River to lift shiploads of fresh water for export from the State. The practice has been traced back to 1971. By that year, the New York State multi-million dollar investment in water purification begun by Governor Nelson Rockefeller's "Pure Waters Program" had achieved the result of making Hudson River water worth seeking.

The tanker trade grew gradually until 1982 when some 34 tankers plied the Hudson to Hyde Park and Kingston in order to lift New York Hudson water. Around 1982 the public in the mid-Hudson area began to complain about the practice to the DEC and others. The U. S. Coast Guard chose to ignore the practice. An enterprising and highly motivated conservation group, The Hudson River Fishermen's Association ("HRFA") researched the phenomena as it had other dangers to the Hudson over the past two

decades. HRFA brought evidence to DEC and to the public press that Exxon was discharging contaminated salt water from cargo tanks and ballast and was lifting fresh water for export to Aruba for the Exxon refinery and for public drinking water supplies on that "desert" island nation.

DEC determined in September of 1983 that Exxon had failed to obtain (i) a permit to take fresh water for drinking water supplies as required under §15-1501 of the New York State Environmental Conservation Law ("ECL"), and (ii) a permit to export water from the Hudson Valley outside the State as required under ECL §15-1505, and (iii) a permit to discharge wastes into the Hudson as required under the State Pollutant Discharge Elimination System ("SPDES"), as required under ECL §17-0803 administered by New York State within the framework of the Clean Water Act.

Exxon's conduct generated major public controversy. The public cares about the Hudson; the Hudson River has been cleaned up tremendously, at great cost to New York taxpayers. The mid-Hudson water is classified by DEC as "Class A" (ECL §17-0301), a water quality standard for potable water. Six public drinking water suppliers draw Hudson water from the same region frequented by tankers; four in Dutchess County (the City of Poughkeepsie, the Castle Point Veterans Administration

Hospital, the Hudson River Psychiatric Center, the Village of Rhinebeck, the Highland Water District) and two in Ulster County (the Port Ewen Water District and the Highland Water District). The City of New York maintains a standby supplemental water supply system at Chelsea.

Public opinion was highly critical of Exxon's practice, as evidenced in a public hearing held on November 28, 1983, by the New York State Assembly Committee on Environmental Conservation in Kingston, and by letters to Commissioner Williams and Governor Mario M. Cuomo, and by press reportage and editorial commentary. Constituent complaints to area Congressmen are a further indication of the public distress. The distress focused on both the water lifting and the pollution aspects of Exxon's conduct.

The region's distinguished Congressmen articulately and ably both reflected and summarized the citizen's views on both these aspects:

Representative Hamilton Fish, Jr., observed: "For this tanker to take six million gallons of fresh water without the proper State permits and without any form of remuneration to the municipalities affected, is comparable to robbery and must stop." (Nov. 9, 1983)

Representative Richard L. Ottinger observed: "Dumping cancer causing chemicals like benzine, ethyl benzene, toluene and xylene into a river that provides drinking water, recreation and employment to hundreds of thousands of people is obviously of grave concern. Dumping millions of gallons of salt water into a precarious estuarine system was also reprehensible." (Oct. 17, 1983)

There was no excuse for Exxon to have transported 61 tanker loads of Hudson River water to Aruba in 1983, 32 in 1982, and 7 loads per year from 1977-81, without even discussing how to comply with the laws of New York State with DEC, much less actually obeying the law. These tankers were not free agents operating in international waters at sea. The tankers entered the very heart of the great Hudson Valley, immortalized by Washington Irving, John Burroughs, Teddy Roosevelt, Franklin and Eleanor Roosevelt and countless residents and visitors. I myself swim in the Hudson each summer. There is a shared community sense that a treasured resource was violated, callously and crassly, in Exxon's repeated water lifting.

To Exxon's credit, it voluntarily suspended its practice in October of 1983, once the public criticism was manifested fully. Exxon then settled claims asserted by HRFA and others by grants of $250,000 to the Hudson River Keeper and $250,000 to the Open Space Institute for water quality projects in the region. New

York State subsequently commenced suit against Exxon in April to recover payment for the value of the water taken and assess penalties for the discharges. Exxon and New York reached a settlement of their dispute this week, with Exxon agreeing to remit $1.5 million to the State of New York and agreeing to suspend lifting water.

Once the past conduct is behind us, however, the question is what new legal regime should govern water lifting. S.2239 is useful to focus discussion on this issue. As a solution in itself, it needs much further research and analysis. DEC stands ready to help the bill's sponsors and this Committee in that analysis. On balance, DEC is of the view that further experience with administrative rulemaking or legislating at the State level may be needed before Congress acts at all. There are several reasons for this view.

Water law is primarily governed by State law. The common law doctrine of riparian rights governs in most eastern states, as the appropriation doctrine does in the western states. State statutes enacted in derogation of the Common Law vary these court made rules. Export of water from a watershed is prohibited at Common Law; some States, such as New York, varied the Common Law rule, for instance to allow non-riparians to withdraw water for public drinking water supplies or to export water from the State by license as New York did with ECL §15-1501 and §15-1505.

States have modified their water law regimes as circumstances require. New York's Legislature through the able leadership of Assemblyman Maurice D. Hinchey, is considering amendments to the ECL to regulate water lifting and protect legitimate public interests at the same time. It may be possible to permit tankers to lift water upon payment of a license fee or severance tax. Water supply intake points could be protected from tank or ballast discharges by proscribing ship discharges within 2000 feet of an intake point; the Hudson River Pilots Association pilots could oversee the observance of this proscription just as they safely guide tankers up the River. Variants of these ideas are under study in the New York State Legislature.

There is ample water in the Hudson at most times of the year to sustain some water lifting and export by tanker. Any change in the State law of water rights should be effected by the State Legislature. If S.2239 were enacted, it would be a precedent to sanction federal intrusions into all water law regimes.

At present, the practice of water lifting for export is only documented to have occurred in the Hudson. I have conferred with Canadian officials, and we know of no water lifting in the St. Lawrence where water is pure enough to make export possible. Provincial law in Ontario and Quebec govern the use and allocation of water in the St. Lawrence, as does New York law. S.2239

would define waters of the St. Lawrence and Great Lakes to be the artificial boundary line with no attempt to define principles of allocation and conservation and sharing of this "fugacious" resource. While purporting to be a unilateral enactment affecting U. S. waters, S.2239 in fact could have the practical effect of altering Canadian provincial water rights. Obviously, this should not be considered without the participation of Canadians, and if possible their concurrence in defining a shared system. New York constructively cooperates with Ontario and Quebec on countless matters; we are prepared to do so on the further use and allocation of St. Lawrence water if and when any exporter shows interest. No practice nor any interest now exists for water lifting by tanker on the St. Lawrence and no Federal or State legislation is needed for the St. Lawrence.

Nor is there evidence of water lifting and export on the Columbia River or the lower Delaware River, both rivers being deep enough for tanker traffic. No Columbia water lifting by tanker has been identified. The Delaware raises other thorny questions. To alter the volume of fresh water in the Delaware by sanctioning water lifting and export could have a deleterious effect on the equitable apportionment of Delaware Basin water, as defined by U. S. Supreme Court decisions and interstate compacts. Alteration of volume could have a deleterious effect on the salt

front in times of drought. The Delaware River Basin Commission would doubtless have a concern with the possible impact of S.2239.

Finally, while tankers could enter the Mississippi the water quality is not up to that achieved in the Hudson or Columbia Rivers. Water lifting and export for drinking water purposes is not suitable there as yet, and it apparently is not done.

In short, the only place water lifting appears to be at issue is on a river wholly within one State, New York's Hudson. DEC believes that the wisest policy in our Federal-State system is to afford the sovereign state of New York the opportunity to address the water lifting phenomena in the first instance. If experience can be gained in New York, other State or provincial jurisdictions may study it and draw upon it. If a need for federal laws is seen to exist in actuality, then Congress can act.

The U. S. Environmental Protection Agency has been deferring to New York's principal role. EPA's Regional Administrator in New York, Ms. Jacqueline E. Schafer, advised Representative Fish on January 6, 1983 that EPA was investigating the discharge aspects but respected New York's role on the State issues of water supply: "With respect to the issue of Exxon's withdrawal of fresh water for subsequent resale, we are unaware of any cause of

action arising from this conduct. New York State, however, presently has this matter under investigation pursuant to State law."

On the side of discharges both DEC and the U. S. Environmental Protection Agency view the SPDES permit as governing. EPA asked Exxon to file an application with DEC for a SPDES permit prior to any resumption of Exxon's discharge and loading operations (letter of December 27, 1983). Exxon agreed to obey all applicable federal laws in settling its dispute with HRFA and the EPA. Exxon's discharges are "point sources" under ECL §17-0195(16) and its discharges were pollutants, under ECL §17-0105(17), into the waters of the State as defined in ECL §17-0105(2). Comparable definitions apply for the Federal Clean Water Act.

Neither Exxon nor any other tanker operator has asked DEC to engage in rulemaking to clarify its SPDES procedures to facilitate regulating operations such as Exxon's water lifting in compliance with the Clean Water Act under New York law. DEC is prepared to consider promulgating more refined rules. S. 2239 does not address this half of the controversy; Congress would be unwise to adjust export without considering the related water quality regime.

On behalf of DEC and Commissioner Williams, I urge you to defer Federal law making until after New York State has had a chance to resolve the issues which legitimately concern the public in the case of water removal from the Hudson River. New York's Coastal Zone Management Program has just gone into effect, regulating both sides of the Hudson River; these state land use controls, when designed, require consistency on the part of Federal agencies. Through this vehicle, then Federal Commerce Department regulation as contemplated in S.2239 would still be subject to State controls.

Water is a precious resource. DEC applauds this Committee's concern for water, and the care of this renewable resource. The life and economy of the mid-Hudson Valley region depends on the Hudson River to a much greater degree than Exxon ever will. Exxon successfully has been supplying its needs in Aruba from sources in other nations such as Panama or Venezuela since last Fall without Hudson River water. If Exxon still wants Hudson River water, DEC invites Exxon, and any other would be exporters, to join in a positive dialogue to shape an equitable framework for New Yorkers to share the extra water with nations like Aruba and companies like Exxon. We urge Congress to encourage such a dialogue.

Thank you for your attention.

AGREEMENT

Agreement, made this 5th day of June, 1984 by and between:

(a) The State of New York on its own behalf and on behalf of the Department of Environmental Conservation ("New York");
and

(b) Exxon Corporation on its own behalf and on behalf of its subsidiaries ("Exxon").

WITNESSETH that:

WHEREAS Exxon maintains that it has over a number of years discharged clean saltwater ballast and fresh water used for rinsing incident to loading quantities of fresh water from the Hudson River for transport to Aruba by tank vessels owned or chartered by Exxon; and

WHEREAS Exxon at certain periods of time loaded a quantity of fresh water from the Hudson River for transport to Bayonne, New Jersey; and

WHEREAS Exxon on or about October 5, 1983, voluntarily suspended all further discharges of ballast and fresh rinse water incident to loadings of fresh water from the Hudson River for transport to Aruba or elsewhere until satisfactory resolution of questions concerning its activities; and

WHEREAS New York commenced suit against Exxon in the New York State Supreme Court, Ulster County, by service of a summons and complaint on April 25, 1984, regarding Exxon's activities and payment for water loaded and Exxon on May 23, 1984, filed a petition removing the action to the United States District Court for the Northern District of New York, and New York and Exxon preserve their rights with respect to the competence of the State or Federal Court to hear such action; and

WHEREAS Exxon denies that it has violated any laws or regulations in connection with its activities and denies that it is liable for any sums of money; and

WHEREAS Exxon and New York have entered into negotiations in an effort to serve the public interest by resolving all concerns which New York has and as a result of such negotiations the parties have arrived at an understanding which they believe represents a fair and equitable balancing of all of the relevant considerations.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Exxon will remit $1,500,000 to the State of New York.

2.a. Exxon will continue the suspension of loading fresh water for cargo and discharges incident thereto in the Hudson River until June 30, 1985, or until such time as the New York State legislature enacts statutes governing loading and discharges incident thereto, whichever comes first.

2.b. In the event that the State legislature does not enact such statutes by June 30, 1985, Exxon may elect to terminate its said suspension by adhering to the following procedures:

(1) Exxon shall serve written notice of its intention to terminate the voluntary suspension upon the parties to this Agreement.

(2) Exxon shall undertake no actual water loading and discharges incident thereto in the Hudson River for a period of three years from ~~May~~ June 30, 1985,

without an additional notice to New York given at least 30 days in advance of the estimated date of the water loading, which notice shall set forth the following information:

(a) Type of vessel including whether it is a segregated ballast tanker;

(b) Approximate date of anticipated water loading;

(c) Approximate amount of water intended to be discharged and loaded;

(d) Approximate location of the water discharging and loading.

2.c. Following service of any such notice, Exxon agrees that, upon request by New York made with reasonable notice, it will meet with representatives of New York to discuss the technical, operational, statutory and regulatory considerations presented by discharges incident to any intended resumption of water loading by Exxon in the Hudson River. Should Exxon resume water loading in the Hudson River, it will comply with all currently applicable State statutes and regulations.

2.d. Should Exxon elect to terminate its said suspension of water loading in the Hudson River pursuant to Paragraph 2.b., then New York may pursue such legal remedies as it considers it may have under Federal or State law but only as to any such activities which may arise after June 30, 1985.

3. New York releases Exxon from any and all liability whatsoever relating to the activities alleged in the complaint referred to herein and will forthwith withdraw and discontinue with prejudice all pending legal actions against Exxon. Each party will bear its own costs. In addition, New York shall not commence further actions in personam or in rem or seek damages, penalties or other remedies of any kind or description under any State or Federal laws or otherwise, in judicial or administrative forums, for any activities connected with the past water withdrawals, transport and export from the Hudson River or discharges into the Hudson River undertaken by or on behalf of Exxon or any of its affiliates or subsidiaries prior to the date of this Agreement.

4. Other terms and conditions

a. Modification

This Agreement may not be modified except by the written consent of all the signatory parties hereto.

b. Disclaimer of admissions

This Agreement has been entered into by the parties for the purpose of resolving disputes through negotiations, in a manner designed to serve the public interest. In so doing, the parties agree that nothing herein shall be construed in any manner as an admission or confirmation of any violation of any laws or regulations. Nothing herein shall be construed in any manner as surrendering any of the rights or interests which New York has or may have in the waters of the Hudson River.

c. Mailing addresses

Any written notice and other document to be sent to parties to this Agreement shall be sent by United States mail to their respective addresses listed hereunder or such other address as specified by them in writing.

Addresses

Exxon Corporation 1251 Avenue of the Americas New York, New York 10020	Department of Environmental Conservation 50 Wolf Road Albany, NY 12233-0001
Attention: Lawrence G. Cohen, Esq.	Attention: Henry G. Williams, Esq.

EXXON CORPORATION

By Stephen Starnes
Vice-President

THE STATE OF NEW YORK
by Robert Abrams
Attorney General

By [illegible]
Title Assistant Attorney General

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By [illegible]
Commissioner of
Environmental Conservation

SUPREME COURT ULSTER COUNTY
STATE OF NEW YORK

STATE OF NEW YORK, Plaintiff, v. EXXON CORPORATION, Defendant.	STIPULATION AND ORDER OF DISCONTINUANCE WITH PREJUDICE Index No. 84/1129

The claims asserted by plaintiffs in the above-captioned action having been settled by virtue of an Agreement dated June 5, 1984, a copy of which is attached hereto and no party hereto being an infant or incompetent person for whom a committee has been appointed and no person not a party having an interest in the subject matter;

Upon the subjoined consents of the parties hereto; it is

ORDERED that the above-entitled action be and is hereby dismissed with prejudice, with each party to bear its own costs.

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant
120 Broadway
New York, New York 10271

By Mary L. Montgomery
A Member of the Firm

ROBERT ABRAMS
Attorney General for the
State of New York
Attorney for Plaintiff

By James A. Sibley
Assistant Attorney General

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,	
Plaintiff,	STIPULATION AND ORDER OF DISCONTINUANCE WITH PREJUDICE
v.	84 Civ. 726 (RJM)
EXXON CORPORATION,	
Defendant.	

The claims asserted by plaintiffs in the above-captioned action having been settled by virtue of an Agreement dated June 5, 1984, a copy of which is attached hereto;

Upon the subjoined consents of the parties hereto; it is

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KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant
120 Broadway
New York, New York 10271

By Mary L. Montgomery
A Member of the Firm

ROBERT ABRAMS
Attorney General for the
State of New York
Attorney for Plaintiff

By Assistant Attorney General

SO ORDERED: _____
USDJ

STATE OF NEW YORK
EXECUTIVE CHAMBER
MARIO M. CUOMO, GOVERNOR

Press Office
518-474-8418
212-587-2126

FOR RELEASE:
IMMEDIATE, WEDNESDAY
JUNE 6, 1984

Governor Mario M. Cuomo today announced a settlement by which the Exxon Corporation will pay $1.5 million to New York State and continue its agreement not to discharge salt water into the Hudson River or remove fresh water from it.

The suspension of discharge and taking of water will be in effect until June 30, 1985, or until the New York State Legislature enacts statutes governing water loading and discharges.

Governor Cuomo directed a State law suit against Exxon because Exxon tankers discharged contaminated saltwater into the Hudson River in the Poughkeepsie vicinity, and withdrew large amounts of fresh water for Exxon use and for resale in Aruba.

The Governor also rejected an earlier proposed settlement as inadequate.

Exxon had settled related litigation brought by the United States Attorney and the Hudson River Fishermen's Association on April 20. That settlement resulted in a $500,000 "contribution" by Exxon to be evenly divided between the Hudson River Fishermen's Association and the Open Space Institute.

The agreement, which is being submitted to a federal judge in Albany today for approval, is the settlement of a lawsuit brought against Exxon last April. The suit had charged Exxon with dumping salt water into the River without the required permits and with "unjustly enriching itself" at the expense of New York State by taking fresh water from the Hudson.

The agreeement will be filed in both Federal District Court in Albany and State Supreme Court in Kingston today for approval. The lawsuit had alleged that on at least 160 occasions between 1971 and 1983 Exxon discharged salt water contaminated with "oil, chemicals, pollutants or other waste" into the Hudson River. According to court papers, Exxon took fresh water from the River to the Caribbean Island of Aruba where it used some of the water in its refinery and sold the rest of the water to the government of Aruba.

"Respect for New York State's environment and our precious resources must be maintained," Governor Cuomo said. "This settlement provides for substantial payment to the State and gives the Legislature an opportunity to clarify under what circumstances, if any, such conduct should be allowed in the future."

- more -

The agreement, which was entered into without admission of wrongdoing, also provides that if the State Legislature does not act by June 30, 1985, Exxon may elect to resume its operations in the River if it gives adequate notice to the State.

The notice shall contain the type of vessel, the approximate date of anticipated water loading, the approximate amount of water intended to be discharged and loaded, and the approximate location of the water discharging and loading.

Following service of any such notice, Exxon must meet with representatives of New York State to discuss the technical, operational, statutory and regulatory considerations presented by discharges into the Hudson if the State so requests. Should Exxon resume water loading in the Hudson River, it is required to comply with all currently applicable State statutes and regulations.

Governor Cuomo praised the work of his counsel, Gerald C. Crotty, who was instrumental in concluding the negotiations. The Governor also cited Attorney General Robert Abrams and his staff, and Environmental Conservation Commissioner Henry Williams and counsel Nicholas Robinson, all of whom were party to the negotiations of the settlement.

Senator D'AMATO. Well, thank you, Mr. Robinson.

Mr. Sevinsky, let me ask you, supposing instead of the legislation reading "may" consult, it read "shall" consult. What would your feeling be with respect to that legislation?

PRIMARY ROLE SHOULD BE LEFT TO THE STATES

Mr. SEVINSKY. I think we would like it perhaps—I don't have any direct language in mind—but I think we would like it even more clear that a fundamental and primary role is left in the States and that if the Federal scheme is enacted it would be more of a backdrop or a safety net for any States that had chosen not to act or in the event any State did act and the statute was struck down for whatever reason.

I would say more likely the Clean Water Act, for example, provides to the States the authority to go out and regulate and adopt a program and actually go further and be more stringent if they so desire, and that's by, for example, imposing water quality standards. We would like to see that same kind of deference to the States spelled out rather expressly here.

Senator D'AMATO. What if a company put forth the contention that indeed it was taking water on for purposes that were international in scope both via commerce in terms of the operation of that vessel, are you willing to undertake that the State has inherent rights to regulate that conduct, or could not a successful argument in defense of that be that this is properly within the province of the Congress? Are you concerned about that?

Mr. SEVINSKY. Well, some of those issues as to the extent of the interest that the State has in exercising its police power to protect its natural resources we believe probably would have been litigated in this *Exxon* case which all parties have chosen to settle rather than take to the end.

I am not suggesting that in the State kind of legislative scheme that we would like to regulate that we would go so far as to thwart a legitimate kind of navigational need such as by taking some kind of ballast on or whatever for navigational purposes. Our intent would be to not go far enough to run afoul of the Interstate Commerce Commission clause, but we believe our interests in our resources is so profound that we can go as far as we need at the State level.

Senator D'AMATO. Well, let's look at the question that I raised to both Senator Moynihan and the other three Congressmen as it related to taking on water for the needs of the ship. What you're saying is that you would not attempt to regulate that kind of reasonable utilization as opposed to the sale, if we distinguish the two.

Mr. SEVINSKY. Right; the sale is one issue. I'm not sure that a real simple phrase could be worked to draw the distinction between when you will be subject to regulation and when you won't be.

Senator D'AMATO. Isn't that an important consideration for us to undertake?

Mr. SEVINSKY. Yes, I believe it is.

Senator D'AMATO. Have you seen any legislative proposals that have been offered in the State that deal with this?

Mr. SEVINSKY. Well, we have in the assembly an early draft that is now proposed and it was the subject of some hearings at the assembly level and I believe that provides the kind of framework that we're discussing about a bill introduced by Assemblyman Hinchey. There may be some requirements for either spelling out in the legislation or in State regulations that might be promulgated pursuant to the State regulations, the kind of limited exceptions that you're speaking of, but I don't think we would go as far as the Shipping Association has suggested.

Senator D'AMATO. In what respect?

Mr. SEVINSKY. Well, one of the questions is: What is the difference between ballast and cargo? If you're going to regulate the taking on of large quantities of water, I think we have to take a close look at when that water enters the cargo tank as opposed to a ballast tank and apparently some vessels also have combined carrying capacities. So you could come up and say that it's ballast, and go down and sell it later on.

Senator D'AMATO. Well, if you explicitly said that any water that was taken on could not be sold without a permit, or coming in for the appropriate review—you know, we can't adopt a legislative posture, it seems to me, that automatically convicts the shipper and does not give the benefit of a doubt. That goes beyond what is fair and reasonable and it seems to me that we want to protect the environment and I think we can protect the environment, but we certainly don't want to do damage to legitimate commerce that does not adversely impact the environment.

NEED FOR CAUTION

So I just caution you, because there is no chance of passing this bill in this form. While you may or may not appreciate that and you may say, "Well, that's fine, defeat it," in terms of the State's interests, I would caution that it's very difficult to strike the

proper balance and safeguard the environment and yet not create havoc in the world of commerce that is necessary for good economic as well as ecological balance that we all seek. I don't think the two are naturally antagonists, by the way. I think the proper safeguards can be put in that do not work an economic hardship on the shipping industry, nor do the most ardent of ecologists want to see the legitimate uses of fresh water such as being able to take on appropriate water for the crew and for the purposes of safe navigation eliminated. I would caution that in our effort to see to it that we don't have a recurrence of the situation that's taken place over the years, we do not simply do great damage because there was no one there to stand and champion the cause of Exxon. I understand that if they don't deliver the fuel and don't make the trips, we'll have to get another way to get it up there. If you're not going to provide them the opportunity for ballast, not for sale but for ballast, then who's going to bring it up and what's the cost going to be and is industry going to be affected and is that something that's in our total interest?

Let me just ask you in your capacity, both of you, to please share a special sensitivity to that so we don't find ourselves in a situation which we will all regret.

Mr. SEVINSKY. I thank the Senator. We are concerned about that and I want to assure you that we have no desire at the State level to impose any restriction——

Senator D'AMATO. It makes a great headline though. I understand that. I think I've run for office a number of times at several levels.

Mr. SEVINSKY. I haven't yet myself, Senator.

Senator D'AMATO. Well, you'll probably best serve your Nation, yourself, and certainly your family if you don't, but I want to tell you that politically—let me tell you, it's a great headline—"They're terrible, they're beat down and bad," and then you pass restrictive legislation that not only corrects a deficiency but goes far beyond what you want and that's not carried by the press, and now you've created a situation that isn't going to improve the environmental quality one iota but is going to do severe economic damage to the region. So I just suggest, please, let's be responsible.

It may be rather difficult to get this kind of legislation enacted on the national level. However, we cannot simply shut our eyes to the kind of situation that might indeed recur and may be occurring throughout this country, not only in the Hudson but in other areas. So it's important that we focus in on this and I think it's also important that we put forth legislation that cannot easily be attacked, that is sound, because when we put up legislation that may be good copy but in the final analysis does not take into proper consideration some of the things that we have talked about, then it won't be enacted and if it were enacted it would be very dangerous.

So when you review and make your legislative suggestions to the assembly and to the State senate, I would hope that you would be mindful of some of these things that we have touched on here.

Mr. ROBINSON. Senator, I think both Senator John Dunne, the chairman of the senate committee, and Assemblyman Maurice Hinchey, chairman of the assembly committee with jurisdiction over these matters in the New York State Legislature in Albany,

share very many of your views. The State has made a great effort to build up the Port of Albany and shipping is important on the Hudson. So with some careful and prudent attention to the legislation, perhaps limiting where water can be lifted so as not to impact upon public water supplies, perhaps proscribing the discharges and water lifting within certain geographical areas, there are still a lot of other areas in the Hudson in which this practice might go on in a careful way and still not provide for potential loopholes. I think we can come up with a conscientious, fair, and equitable statutory scheme for allocating these resources, one that the citizens in the mid-Hudson area will doubtless have a great deal to say to their legislators about before it is enacted.

Senator D'AMATO. Let me just ask you one final question and then we'll go on to our third panel. Do you anticipate that legislation will be completed in the State legislature this year or do you think it will be a subject that will be put over to the next year?

Mr. ROBINSON. Well, the settlement agreement between Exxon and New York contemplates potential State legislation by June 30, 1985. That's in the agreement itself. I cannot, of course, predict the course of legislative deliberations. They are a coequal part of the government and will be guided by their own lights, but I'm sure that there is a goodwill interest in addressing this question in a responsible way.

Senator D'AMATO. So at least by June 1985 there will be some legislation enacted, knowing of the Governor's concern and others, I'm sure your estimate is correct, and it will be interesting to see what develops in that legislative process.

Let me thank both of you for coming.

Mr. SEVINSKY. Thank you, Senator.

Mr. ROBINSON. Thank you.

Senator D'AMATO. Our third witness will be Mr. John Cronin of the Hudson River Fishermen's Association. I guess this is the association that has been credited and we want to commend you, Mr. Cronin, you and the association, for your active pursuit and concern with this matter. Were it not for a number of active citizens this situation may never have really come to anyone's attention. So we commend you for your vigilence and your cooperation in this matter.

STATEMENT OF JOHN CRONIN, THE HUDSON RIVER FISHERMEN'S ASSOCIATION

Mr. CRONIN. Thank you very much and thank you for letting me be here today.

Let me apologize for Mr. Boyle not being here. We were both out of town when we got word of the rescheduling of short notice and I don't have a prepared statement. I have a number of notes which Bob and I put together on a telephone call and I will go through that with you.

HUDSON RIVER A VALUABLE REFUGE FOR FISH

This hearing comes at a time when the Hudson River estuary is fast being viewed in the words of HRFA president, Robert Boyle, as the Noah's Ark of the east coast, perhaps the last refuge of many

of our most valuable natural species, like American shad, striped bass, and sturgeon. I choose to make this point at the outset of my testimony because it is as an estuarine habitat that the Hudson has inspired our work over the past 17 years because it is an estuarine habitat that the Hudson's future be secured and because it is the Hudson's estuarine habitat against which regulations, legislation, and management of development schemes which may affect the river must be measured.

At the time when a demise of our coastal rivers and estuaries is a topic of puzzlement and speculation and indeed State and Federal emergency legislative initiatives, as in the case of striped bass as you're well aware, Mr. D'Amato, the future of our water resources must be jealously guarded even from the well-intentioned and even from the unknown.

The legislation before this committee represents thinking with which candidly I'm not completely comfortable. Philosophically, I find it discomforting to discuss water as a commodity or a product in trade, but the time has come for just such a discussion.

The Hudson has long suffered from the thinking which has it that the river's shallow shores, tributaries, marshes, and water itself are there for the filling in, building of ponds, discharging into, or removing. Despite this, the provision of the few, and the active participation of many, and the assistance and support of the public, the Hudson has retained its place as an incredibly productive estuary, this in the face of much neglect to other estuarine systems such as the Chesapeake and the San Francisco Bays.

The question before us in 1984 when discussing the Hudson is: Do we declare the role and contributions of its magnificent estuarine environment or again, to quote my colleague, Robert Boyle, do we torpedo Noah's Ark?

We have been engaged in many controversial issues over the years and with many formidable adversaries—Consolidated Edison, General Electric, U.S. Army, Governors Rockefeller and Cuomo, to name a few. In many cases, like the PCB case, fish kills at Indian Point and the water exportation by the Exxon Corp., Government agencies were either aware and unconcerned about the activities in question or implicit in the permit process, as with GE's trouble with PCB's.

The Hudson River Fishermen's Association has a long history of sounding the warning bell on the issues of the day and issues of the future. We have been called alarmists, knee-jerk environmentalists, and all the standard fare one can expect, but issues we have raised and fought have permanently changed the face of public policy as represented by the $12 million settlement of Consolidated Edison and other utilities, the $7 million settlement with GE and the State of New York, and now $1.5 million settlement with the Exxon Corp.

All of New York staters share in the pride over the fact that through nonprofit, private initiatives in the public interest the estuary has been preserved despite the problems. The successes we've had on the Hudson have only happened by asking the hard questions, questions the mere answering of which makes enemies, never mind the answers. It is ludicrous, for instance, to call Exxon's removal of water from the Hudson an environmental crime of the

worst kind, as it has been called, when in New York State people suffer from the toxic landfills they live next to, when there are plans to put State bonds in to eliminate the Hudson's wintering grounds——

Senator D'AMATO. Mr. Cronin, let me at this point interrupt you and applaud your efforts to aid conservation. I think that you have added to this hearing a very necessary ingredient that all too often by the way is missing by our public officials. You should run for political office because it would be refreshing to have people who can place emphasis correctly and properly prioritize what really are the most important issues. I think the discharge of what could be carcinogens and other materials and contaminants is awful, but I think the proper balance—and I'm not trying to say "nice, nice" to them and produce headlines that say "D'Amato commends Exxon for taking the water," needs to be struck.

I just wanted to commend you for that observation and the distinction you make that all too often many of us in public office fail to do it.

Mr. CRONIN. Thank you very much.

The last example I was going to mention was the Hudson River commercial fishermen who suffer with the loss of 75 percent of their occupation due to regulatory complicity and the PCB dumping case, as another example of a very serious issue which I think you consider more serious than that.

DIFFICULT TO DEAL WITH

If I sound angry about some of these issues, it's because it's my intent to point out that the hard job is dealing with these matters before they become tragedies. It may seem that the removal of water by the Exxon Corp. from the Hudson amounts to the proverbial drop in the bucket. If that is the case, then perhaps the drop should have been left where it belonged. There's no point in minimizing the importance of water to an estuary. There certainly wouldn't be much left if it were all taken away, but at what point does removal of water become a concern? The inflow of fresh water into an estuary such as the Hudson is absolutely essential for its productive functioning.

In 1981, the Office of Biological Services of the U.S. Fish and Wildlife Service published a two-volume work, "The Schemes of the National Symposium of Fresh Water Inflows of the Estuaries." One of the studies was made by Dr. Rosenberg who received his Ph.D. in oceanography from the Oceanographic Institute in Moscow. He worked on the estuaries of the Black Sea in the southern part of the Soviet Union for more than 20 years. Wreckage of estuaries by water withdrawal and diversion has occurred on a massive scale in the Soviet Union and this self-inflicted disaster is undoubtedly one of the reasons Soviet vessels plundered the fish stocks of the United States before introduction of the 200-mile limit.

As a New Yorker, Mr. D'Amato, you are aware that the voters of the State twice passed bond issues in excess of $1 million by an overwhelming majority in order to cleanse the Hudson and waters of its State. The voters didn't do this to unwittingly contribute to

water being taken overseas without regulation. So it is an issue of merit to be certain.

The water resources in war and peace are particularly poorly regulated. A water rich area in war, no doubt, at some future date will once again turn our direction as a source of cheap and plentiful water. Given the current state of affairs, there is no reason why the over 100 Exxon tankers that loaded that water for the island of Aruba could not just as easily been 1,000 tankers with no utilization of revenue for that taking.

The New York State Assembly recently, the chairman of the senate committee on conservation, has introduced legislation that specifically calls for any reimbursement for water to go back to the resource from which it was taken. I would like to see that principle embraced in the bill to amend the Export Administration Act of 1979.

In addition, clarification is necessary in relation to water taking for ballast with specific attention to preventing vessels from making a special trip up the Hudson for that ballast. If it's not a necessary trip, it's not worth taking.

Tankers are not the only vessels that engage in the water trade. In fact, Exxon Corp. did use barges for transporting the water but not for export. This, too, should be included in the bill.

Future thinking represented by this legislation is welcomed. Should any program of water export be carried out, however, it must be done with attention to the possible effects on the source from which it was taken with the understanding that in all likelihood this water is where it is for a reason and if it isn't to be used in a consumptive way, first preference must be given to domestic needs.

I would like to conclude by saying that I hope the introduction of this legislation represents belief in the principle that exploitation, consumption, or destruction of our estuarine resources cannot be taken lightly. Oil companies are easy targets. Whether their reputation is earned or not, the word "tanker" strikes a negative chord in a good portion of the public. Nobody knows this better than the Exxon Corp. public affairs department. Unfortunately, it is not an easy target which we must throw the hardest questions to. Let's take the opportunity presented by this relatively simple issue to do an evaluation of what our coastal resources mean to the larger picture. I hope our representatives are willing to pose the hard questions and tough thinking to all aspects of the Hudson estuary. In the long term, there is no difference between removal by tankers of water from where it now runs and removal of water by landfills to accommodate a highway where water now runs.

Thank you very much.

Senator D'AMATO. Thank you very much, Mr. Cronin.

Let me just ask you one question. How many years has your organization been working?

Mr. CRONIN. Seventeen years. It started in 1967. We resurrected the old act of 1899 to fight pollution on the Hudson, long before the writing of the Clean Water Act.

Senator D'AMATO. And how long have you been associated with the organization?

Mr. CRONIN. Well, I've worked on the Hudson Valley for the past decade, part of it in government, part of it for private environmental groups, and now my position is the Hudson riverkeeper. As a matter of fact, I used to be on the staff of Congressman Fish at one time.

Senator D'AMATO. Very good. It's very nice to hear you today and you made an excellent presentation. We look forward to working with you.

Mr. CRONIN. My pleasure. Thank you very much.

Senator D'AMATO. Our last panel will be Mr. Gerald Graves, vice president of Exxon. First, we will take your testimony as if read in its entirety and ask you to read any part of it or all of it or any summary you might want to make of it.

STATEMENT OF GERALD GRAVES, VICE PRESIDENT, EXXON INTERNATIONAL, ACCOMPANIED BY LARRY COHEN, ADMIRALTY COUNSEL, EXXON CORP.

Mr. GRAVES. Thank you very much for that latitude that you have given me. We are pleased to be here today to be able to provide our views on the draft U.S. water export bill. I will comment on the Hudson River water-loading activities and the recent agreements reached by Exxon with all the parties involved in this matter.

Before I go further, I'd like to introduce Larry Cohen, admiralty counsel for the Exxon Corp., who is with me here today.

I have submitted a summary statement and a supplemental statement and I would appreciate having both included in the hearing record. Also, in view of several comments made earlier, I feel that I should give an expanded statement and before doing that I would simply also for the record like to make a few points on comments that have been made up to this point in time.

ENVIRONMENT IS A CONCERN OF ALL

First of all, I would mention that we certainly appreciate the comments that you gave just a few moments ago which indicate that the environment, of course, is a concern to us all, but that any legislation that might have a negative impact on business must certainly be considered in drafting any environmental legislation.

I also appreciate your recognition of the relative impact of our operations. We, too, share your concern about our operations being referred to as the environmental crime of the century which we, of course, take very strong exception with.

Just briefly for the record, I would simply like to indicate that we do take exception with several comments that were provided earlier in the hearing and I will mention these very briefly.

Congressman Fish referred to our operations as polluting the river, as did Congressman Ottinger. Congressman Gilman mentioned that we sold water for commercial gain. We did not do so. He mentioned we were culprits in violation of State law and that we callously disregarded regulations despoiling natural resources, thereby making a crime against the public with piracy of their water. Again, simply for the record, I wish to indicate that I take

strong exception with these statements and I will in my testimony bring some information to bear on these items I trust.

I will begin my comments on our position on the water export bill. If Congress believes that such legislation is appropriate, we take no exception to requiring a Federal license for export of fresh water. We assume, of course, that licensing procedures would be administered to avoid any costly vessel delays and any licensing fees would be for the reasonable costs of administration.

We understand from your staff that you already have under consideration a modified bill to take into account concerns raised earlier here regarding the requiring of a license for ballast water used to assure vessel stability. Failure to do so would increase vessel operating costs substantially and unnecessarily.

Also, a minor point perhaps but one that should be taken into account, is that the bill as written is directed only at tankers. You recognize, of course, that other vessels such as dry cargo ships, bulk carriers, and ore/oil ships do have the capability of carrying and exporting fresh water. This could be easily remedied by changing the word "tanker" in the bill to "vessel."

Now I would like to provide a summary of our water loading and ballast discharge operations in the Hudson River.

During the 7-year period, 1977–83, we transported to Aruba 128 tanker loads of water from the Kingston-Hyde Park section of the Hudson River; also in 1980–81, we transported 125,000 tons of water in barges from the Hudson River to our industrial facility in Bayonne, NJ. We transported no water from the Hudson River between 1971–76.

The movements of water to Aruba were undertaken because of operating problems with the desalinization facilities operated by the Aruban Government, the usual source of water for the island as a whole as well as for the refinery operated there by an Exxon affiliate.

Incident to loading the river water, our vessels discharged clean ballast water, about half of which came from segregated ballast tanks or from tankers which had not carried petroleum on their previous voyage. The remainder of the ballast came from tanks which had been thoroughly cleaned in open ocean. As a result of these procedures, we did not discharge harmful quantities of hydrocarbons into the Hudson River, nor violate any water quality standards.

OPERATIONS HANDLED RESPONSIBLY

Exxon's water loading and clean ballast discharge operations were handled responsibly, were entirely legal and caused no harm to the Hudson River or the citizens and communities along the river. We acted openly and fully informed the U.S. Customs and the U.S. Coast Guard, which have regulatory responsibility for fresh water exports and ballast discharges, respectively. Furthermore, we had a Hudson River pilot on board each vessel at the time of the clean ballast discharge and fresh water loading. These pilots are licensed by both the New York State and U.S. Government. I might add parenthetically at this point that these pilots are among several groups that have been aware of Exxon's oper-

ations over many years and we would certainly like to dispel any thought that our operations just began or that they were clandestine in any way. Although our loadings have been sporadic, they have continued from time to time for about 50 years.

After questions concerning our operations were raised by others, we voluntarily suspended our water loading operations in October 1983 pending resolution of the concerns. Although we violated no laws, we commenced discussions to seek a mutually satisfactory resolution with all the major parties involved in this matter. As you know, on April 19, we reached agreement with the U.S. Government and several environmental groups. As part of this agreement, Exxon contributed $500,000 for various environmental projects which will benefit the Hudson River and the citizens and communities using it.

On June 5, we resolved all outstanding matters with New York State. As part of this agreement, Exxon will provide $1.5 million to New York State for the benefit of State residents. While we are confident that we would have prevailed in any litigation, we preferred to see further funds expended to benefit New York State residents rather than engage in expensive and time consuming litigation.

Before providing my conclusion, I would like to give parts of my supplemental statement.

We did not violate New York State water permitting procedures. There simply is no law or regulation which requires a permit to transport water out of New York State by vessel. The State of New York or the United States may choose to pass such legislation, but none exists now.

As confirmation of this, the activities here as well as in New York State seem to bear out our view.

Although there is no law or regulation requiring a permit for clean ballast discharges incident to the normal operation of a vessel, such as prior to or during the loading of cargo, we don't know of any such permit having been applied for by any vessel operating on the Hudson River. Here again, I would point out the obvious. Commercial traffic loading cargo on the river, such as grain, must and does discharge salt water ballast into the river. In addition, Capt. Benjamin Joyce of the U.S. Coast Guard, confirmed at the New York Assembly hearing in November that it is lawful for a ship to discharge its clean ballast in the river. I also might add that this was also confirmed by Secretary Elizabeth Dole in January of this year.

There was and is no requirement that anybody be paid for the water loaded from the Hudson River. Hudson River water is used without charge by municipal, industrial, and other private users and by vessels as ballast water.

Furthermore, no one in New York State was deprived of any water by our operations. To put our loading of water in perspective, the water transported during 1983, our peak year, was less than two-hundredths of 1 percent of the Hudson River water flowing past the Kingston-Hyde Park area. Without our water loading activities, 99.80 percent of the water flowing past the Kingston-Hyde Park area would have run into the ocean; the remaining 0.20 percent being used by the municipal water systems in that area.

With our activities, 99.78 percent of the water still flowed into the ocean.

As further confirmation of this point, Dr. Leo J. Hetling, director of the Environmental Protection Division of the New York State Department of Health, testified that the quantity of water taken from the river by Exxon had no effect on the availability of water to other users.

Turning now to water quality standards, we followed thorough, careful and nationally and internationally required ballast procedures so as to avoid any violation of water quality standards on the Hudson River. For example, if the ballast tanks contained petroleum on their previous voyage, they were thoroughly cleaned in open ocean, utilizing special tank cleaning equipment, in order to remove and hold residual petroleum in a segregated tank before taking on clean ballast water.

Even if there had been traces of hydrocarbons remaining in the clean ballast water at the extremely low levels reported by the Hudson River Fishermen's Association, they would not have violated any water quality standards or caused any harm. A study by Hydroqual, a highly respected independent consulting firm which has done work for both the New York State Department of Environmental Conservation and the U.S. Environmental Protection Agency, indicated that the tremendous volume of water flow of the Hudson River would have reduced such hydrocarbon traces to infinitesimal levels. For example, the study indicated that the peak additions to these levels at the municipal water intake point nearest our clean ballast discharges would have been no more than one-fiftieth of the lowest levels that can be measured by acceptable laboratory techniques. Thus, we are confident that we did not violate any water quality standards, or laws, or regulations nor harm the municipal drinking systems in that area.

AGENCIES AWARE THAT EXXON DID NOT POLLUTE

I'd like to just point out a few other points of testimony that have substantiated this that came out at the hearing in November—the Hudson River Pilots Association, U.S. Coast Guard, New York State Department of Health, and Ulster County Health Department.

For example, a Hudson River pilot was on all our water loading tankers and is obligated to report any pollution or oil spills to the U.S. Coast Guard. Their president, Captain Maloney, testified that at no time did they ever observe any pollution from our vessels. He also stated that in his professional opinion any pollution in the Hudson River was not coming from Exxon's tankers.

The U.S. Coast Guard, which is responsible for enforcing Federal antipollution laws for vessels in the Kingston-Hyde Park section of the Hudson River, was aware of the ballast discharge operations. Captain Joyce testified that they had no evidence or report that Exxon had violated any pollution laws during the Hudson River operations.

Dr. Hetling, director of the Environmental Protection Division of the New York State Department of Health, testified that his department's review showed no violations of laws or regulations of

the State department of health as a result of our activities. Finally, Dean Palen, director of environmental sanitation for the Ulster County Health Department, testified that Exxon's ballast discharges had no impact on the quality of local municipal water supplies.

Finally, I'd like to just comment briefly on our relationship with the island of Aruba and the transportation costs that have been involved.

Contrary to some press reports, neither Exxon nor any affiliate sold water to the Aruba Government or anybody else for that matter. As a result of the desalination plant problems, we incurred about $16 million of freight costs solely attributable to transporting Hudson River water to the island of Aruba. This is since 1977. We recognize if we had been able to purchase water from the Aruba municipal water system, which we would, of course, have preferred, we would have had to pay about $5 million for that water. So we added to our water supply costs about $11 million. About half of that has been reimbursed to us by the Aruba Government.

I might point out, though, having read your statement, there was a reference in there that these transportation costs reduced our U.S. tax bill. They had no effect whatsoever on our U.S. tax bill, but did, of course, affect our Aruba tax bill.

So the net result was that we incurred a loss in helping the Aruba Government to meet its obligations to provide water to the island, including our refinery. The transportation of water was not a profitable venture, but a costly undertaking which was unavoidable.

In conclusion, I just want to emphasize that we have been extremely careful not to damage the river or cause any harm to any citizens and communities bordering the river. We have abided by all applicable laws and regulations. Moreover, our position has been substantiated by testimony of several groups which I mentioned.

We have resolved these concerns associated with our operations with the U.S. Government, the New York State government, the Hudson River Fishermen's Association, and the Natural Resources Defense Council.

That concludes my prepared statement. I'd be glad to answer any questions you might have.

[The complete statements follow:]

PREPARED STATEMENT OF EXXON
TO THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
OF THE U.S. SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

BY

GERALD L. GRAVES
VICE PRESIDENT OF SUPPLY AND TRANSPORTATION
OF EXXON INTERNATIONAL COMPANY
JUNE 7, 1984

INTRODUCTION

THANK YOU, SENATOR. I AM PLEASED TO APPEAR HERE TODAY AT THE COMMITTEE'S INVITATION TO PROVIDE OUR VIEWS REGARDING THE DRAFT U.S. WATER EXPORT BILL. I WILL ALSO COMMENT ON THE HUDSON RIVER WATER LOADING ACTIVITIES OF EXXON CORPORATION AND ITS AFFILIATES* AND THE RECENT AGREEMENTS REACHED BY EXXON WITH ALL THE PARTIES INVOLVED IN THIS MATTER.

POSITION ON DRAFT WATER EXPORT BILL

REGARDING THE DRAFT WATER EXPORT BILL, IF CONGRESS BELIEVES THAT SUCH LEGISLATION IS APPROPRIATE, WE TAKE NO EXCEPTION TO REQUIRING A FEDERAL LICENSE FOR EXPORTS OF FRESH WATER. WE ASSUME, OF COURSE, THAT LICENSING PROCEDURES WOULD BE ADMINISTERED TO AVOID COSTLY VESSEL DELAYS, AND ANY LICENSING FEES WOULD BE FOR THE REASONABLE COSTS OF ADMINISTRATION.

*FOR BREVITY SAKE, I WILL SUBSEQUENTLY REFER TO THESE AFFILIATES AS "EXXON".

WE UNDERSTAND FROM SENATOR D'AMATO'S STAFF THAT THE ORIGINAL LANGUAGE OF THE DRAFT BILL WILL BE AMENDED SO AS NOT TO REQUIRE A LICENSE FOR BALLAST WATER USED TO ASSURE VESSEL STABILITY. FAILURE TO AMEND THE DRAFT BILL WOULD INCREASE VESSEL OPERATING COSTS SUBSTANTIALLY AND UNNECESSARILY.

AN ADDITIONAL POINT WE WISH TO MAKE IS THAT THE BILL AS WRITTEN IS DIRECTED ONLY AT TANKERS. OTHER VESSELS, SUCH AS DRY CARGO SHIPS, BULK CARRIERS AND ORE/OIL SHIPS ALSO ARE CAPABLE OF CARRYING AND EXPORTING FRESH WATER. THIS COULD EASILY BE REMEDIED BY CHANGING THE WORD "TANKER" IN THE BILL TO "VESSEL."

EXXON'S HUDSON RIVER OPERATIONS

NOW, I WILL DISCUSS EXXON'S WATER LOADING AND CLEAN BALLAST DISCHARGE OPERATIONS IN THE HUDSON RIVER.

DURING THE 1977-83 PERIOD, WE TRANSPORTED TO ARUBA 128 TANKER LOADS OF WATER FROM THE KINGSTON-HYDE PARK SECTION OF THE HUDSON RIVER; ALSO IN 1980-81, WE TRANSPORTED 125,000 TONS OF WATER IN BARGES FROM THE HUDSON RIVER TO AN EXXON INDUSTRIAL FACILITY IN BAYONNE, NEW JERSEY. NO WATER WAS TRANSPORTED BY US FROM THE HUDSON RIVER BETWEEN 1971 AND 1976.

THE MOVEMENTS OF WATER TO ARUBA WERE UNDERTAKEN BECAUSE OF OPERATING PROBLEMS WITH THE DESALINIZATION FACILITIES OPERATED BY THE ARUBAN GOVERNMENT, THE USUAL SOURCE OF WATER FOR THE ISLAND'S MUNICIPAL WATER SYSTEM AND THE REFINERY OPERATED BY AN EXXON AFFILIATE.

INCIDENT TO LOADING THE RIVER WATER, OUR VESSELS DISCHARGED CLEAN BALLAST WATER, ABOUT HALF OF WHICH CAME FROM SEGREGATED BALLAST TANKS OR FROM TANKERS WHICH HAD NOT CARRIED PETROLEUM ON THEIR PREVIOUS VOYAGE. THE REMAINDER OF THE BALLAST CAME FROM TANKS WHICH HAD BEEN THOROUGHLY CLEANED IN OPEN OCEAN. AS A RESULT OF THESE PROCEDURES, WE DID NOT DISCHARGE HARMFUL QUANTITIES OF HYDROCARBONS INTO THE HUDSON RIVER, NOR VIOLATE ANY WATER QUALITY STANDARDS.

EXXON'S WATER LOADING AND CLEAN BALLAST DISCHARGE OPERATIONS WERE HANDLED RESPONSIBLY, WERE ENTIRELY LEGAL AND CAUSED NO HARM TO THE HUDSON RIVER OR THE CITIZENS AND COMMUNITIES ALONG THE RIVER. WE ACTED OPENLY AND FULLY INFORMED THE U.S. CUSTOMS AND U.S. COAST GUARD, WHICH HAVE REGULATORY RESPONSIBILITY FOR FRESH WATER EXPORTS AND BALLAST DISCHARGES, RESPECTIVELY. FURTHERMORE, WE HAD A HUDSON RIVER PILOT ON BOARD EACH VESSEL AT THE TIME OF THE CLEAN BALLAST DISCHARGE AND FRESH WATER LOADING. THESE PILOTS ARE LICENSED BY BOTH THE NEW YORK STATE AND U.S. GOVERNMENT.

STATUS OF EXXON'S EFFORTS TO RESOLVE CONCERNS

AFTER QUESTIONS CONCERNING OUR OPERATIONS WERE RAISED BY OTHERS, WE VOLUNTARILY SUSPENDED OUR WATER LOADING OPERATIONS IN OCTOBER, 1983 PENDING RESOLUTION OF THE CONCERNS. ALTHOUGH WE VIOLATED NO LAWS, WE COMMENCED DISCUSSIONS TO SEEK A MUTUALLY SATISFACTORY RESOLUTION WITH ALL THE MAJOR PARTIES INVOLVED IN THIS MATTER. ON APRIL 19, WE REACHED AGREEMENT WITH THE HUDSON RIVER FISHERMEN'S ASSOCIATION, THE U.S. GOVERNMENT AND THE NATURAL RESOURCES DEFENSE COUNCIL. AS PART OF

THIS AGREEMENT, EXXON CONTRIBUTED $500,000 FOR VARIOUS ENVIRONMENTAL PROJECTS WHICH WILL BENEFIT THE HUDSON RIVER AND THE CITIZENS AND COMMUNITIES USING IT.

ON JUNE 5, WE RESOLVED ALL OUTSTANDING MATTERS WITH NEW YORK STATE. AS PART OF THIS AGREEMENT, EXXON WILL PROVIDE $1,500,000 TO NEW YORK STATE FOR THE BENEFIT OF STATE RESIDENTS. IN ADDITION, WE AGREED TO CONTINUE OUR VOLUNTARY SUSPENSION OF WATER LOADING UNTIL JUNE 30, 1985 TO GIVE THE NEW YORK STATE LEGISLATURE TIME TO CONSIDER THE NEED FOR LAWS IN THIS AREA. THE STATE OF NEW YORK WILL WITHDRAW AND DISCONTINUE LEGAL ACTION AGAINST EXXON. WHILE WE ARE CONFIDENT THAT WE WOULD HAVE PREVAILED IN ANY LITIGATION, WE PREFERRED TO SEE FURTHER FUNDS EXPENDED TO BENEFIT NEW YORK STATE RESIDENTS RATHER THAN ENGAGE IN EXPENSIVE AND TIME CONSUMING LITIGATION.

CONCLUSION

IN CONCLUSION, I WISH TO EMPHASIZE THAT EXXON HAS BEEN EXTREMELY CAREFUL NOT TO DAMAGE THE HUDSON RIVER OR CAUSE ANY HARM TO THE CITIZENS AND COMMUNITIES BORDERING THE RIVER. WE HAVE ABIDED BY ALL APPLICABLE LAWS AND REGULATIONS. MOREOVER, OUR POSITION HAS BEEN SUBSTANTIATED BY TESTIMONY OF THE HUDSON RIVER PILOTS ASSOCIATION, U.S. COAST GUARD, NEW YORK STATE DEPARTMENT OF HEALTH, ULSTER COUNTY HEALTH DEPARTMENT AND OTHERS.

WE HAVE ALSO RESOLVED THE CONCERNS ASSOCIATED WITH OUR HUDSON RIVER OPERATIONS WITH THE U.S. GOVERNMENT, NEW YORK STATE GOVERNMENT, HUDSON RIVER FISHERMEN'S ASSOCIATION AND THE NATURAL RESOURCES DEFENSE COUNCIL.

SUPPLEMENTAL STATEMENT OF EXXON
TO THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
OF THE U.S. SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

BY

GERALD L. GRAVES
VICE PRESIDENT OF SUPPLY AND TRANSPORTATION
OF EXXON INTERNATIONAL COMPANY
JUNE 7, 1984

EXXON DID NOT VIOLATE NEW YORK STATE WATER PERMITTING PROCEDURES

THERE SIMPLY IS NO LAW OR REGULATION WHICH REQUIRES A PERMIT TO TRANSPORT HUDSON RIVER WATER OUT OF NEW YORK STATE BY VESSEL. AS CONFIRMATION OF THIS, NEW YORK STATE LEGISLATION, WHICH WOULD REQUIRE A PERMIT FOR TRANSPORTING HUDSON RIVER WATER OUT OF THE STATE BY VESSEL, HAS BEEN DRAFTED AND PROPOSED BY ASSEMBLYMAN HINCHEY.

ALSO, THERE IS NO LAW OR REGULATION WHICH REQUIRES A PERMIT FOR CLEAN BALLAST DISCHARGES INCIDENT TO THE NORMAL OPERATION OF A VESSEL, SUCH AS PRIOR TO OR DURING THE LOADING OF CARGO. WE DO NOT BELIEVE THAT SUCH A PERMIT HAS EVER BEEN APPLIED FOR BY ANY VESSEL OPERATING ON THE HUDSON RIVER. MOREOVER, CAPTAIN BENJAMIN JOYCE OF THE U.S. COAST GUARD CONFIRMED AT NEW YORK STATE ASSEMBLYMAN HINCHEY'S ENVIRONMENTAL CONSERVATION COMMITTEE HEARING ON NOVEMBER 28, 1983 THAT IT IS LAWFUL FOR A SHIP TO DISCHARGE ITS CLEAN BALLAST IN THE RIVER.

NO REQUIREMENT EXISTED TO PAY NEW YORK STATE FOR THE WATER

THERE WAS AND IS NO REQUIREMENT THAT ANYBODY BE PAID FOR THE WATER LOADED FROM THE HUDSON RIVER. HUDSON RIVER WATER IS USED WITHOUT CHARGE BY MUNICIPAL, INDUSTRIAL AND OTHER PRIVATE USERS AND BY VESSELS AS BALLAST WATER.

FURTHERMORE, NO ONE IN NEW YORK STATE WAS DEPRIVED OF ANY WATER BY OUR OPERATIONS. TO PUT OUR LOADING OF WATER IN PERSPECTIVE, THE WATER TRANSPORTED DURING 1983 WAS LESS THAN TWO-HUNDREDTHS OF 1% OF THE HUDSON RIVER WATER FLOWING PAST THE KINGSTON-HYDE PARK AREA. WITHOUT OUR WATER LOADING ACTIVITIES, 99.80% OF THE WATER FLOWING PAST THE KINGSTON-HYDE PARK AREA WOULD HAVE RUN INTO THE OCEAN; THE REMAINING .20% BEING USED BY THE MUNICIPAL WATER SYSTEMS. WITH OUR ACTIVITIES, 99.78% OF THE WATER STILL FLOWED INTO THE OCEAN.

AS FURTHER CONFIRMATION OF THIS POINT, DR. LEO J. HETLING, DIRECTOR OF THE ENVIRONMENTAL PROTECTION DIVISION OF THE NEW YORK STATE DEPARTMENT OF HEALTH, TESTIFIED THAT THE QUANTITY OF WATER TAKEN FROM THE RIVER BY EXXON HAD NO EFFECT ON THE AVAILABILITY OF WATER TO OTHER USERS.

EXXON DID NOT VIOLATE ANY WATER QUALITY STANDARDS

TURNING NOW TO WATER QUALITY STANDARDS, EXXON FOLLOWED THOROUGH, CAREFUL AND NATIONALLY AND INTERNATIONALLY REQUIRED BALLAST PROCEDURES SO AS TO AVOID ANY VIOLATION OF WATER QUALITY STANDARDS ON THE HUDSON RIVER. FOR EXAMPLE, IF THE BALLAST TANKS ON VESSELS CONTAINED PETROLEUM ON THEIR PREVIOUS VOYAGE, THEY WERE THOROUGHLY CLEANED IN

OPEN OCEAN, UTILIZING SPECIAL TANK CLEANING EQUIPMENT, IN ORDER TO REMOVE AND HOLD RESIDUAL PETROLEUM IN A SEGREGATED TANK BEFORE TAKING ON CLEAN BALLAST WATER.

EVEN IF THERE HAD BEEN TRACES OF HYDROCARBONS REMAINING IN THE CLEAN BALLAST WATER AT THE EXTREMELY LOW LEVELS REPORTED BY THE HUDSON RIVER FISHERMEN'S ASSOCIATION, THEY WOULD NOT HAVE VIOLATED ANY WATER QUALITY STANDARDS OR CAUSED ANY HARM. A STUDY BY HYDROQUAL, A HIGHLY RESPECTED INDEPENDENT CONSULTING FIRM WHICH HAS DONE WORK FOR THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, INDICATED THAT THE TREMENDOUS VOLUME OF WATER FLOW OF THE HUDSON RIVER WOULD HAVE REDUCED SUCH HYDROCARBON TRACES TO INFINITESIMAL LEVELS. FOR EXAMPLE, THE STUDY INDICATED THAT THE PEAK ADDITIONS TO HYDROCARBON LEVELS AT THE MUNICIPAL WATER INTAKE POINT NEAREST OUR CLEAN BALLAST DISCHARGES WOULD HAVE BEEN NO MORE THAN ONE FIFTIETH OF THE LOWEST LEVELS MEASURABLE BY ACCEPTED LABORATORY TECHNIQUES. AVERAGE EFFECTS WOULD HAVE BEEN EVEN LOWER. THUS, WE ARE CONFIDENT THAT WE DID NOT VIOLATE ANY WATER QUALITY STANDARDS OR LAWS OR REGULATIONS APPLICABLE TO THE HUDSON RIVER.

EXXON'S POSITION HAS BEEN SUBSTANTIATED BY TESTIMONY OF THE HUDSON RIVER PILOTS ASSOCIATION, U.S. COAST GUARD, NEW YORK STATE DEPARTMENT OF HEALTH AND ULSTER COUNTY HEALTH DEPARTMENT AT ASSEMBLYMAN HINCHEY'S ENVIRONMENTAL CONSERVATION COMMITTEE HEARING.

A HUDSON RIVER PILOT WAS ON ALL OF OUR WATER LOADING TANKERS AND IS OBLIGATED TO REPORT ANY POLLUTION OR OIL SPILLS TO THE U.S. COAST GUARD. CAPTAIN JAMES J. MALONEY, PRESIDENT OF THE HUDSON RIVER

PILOT'S ASSOCIATION, TESTIFIED THAT AT NO TIME DURING EXXON'S VESSEL OPERATIONS DID ANY OF THE PILOTS EVER OBSERVE ANY POLLUTION. MOREOVER, CAPTAIN MALONEY STATED THAT IN THE PROFESSIONAL OPINION OF THE HUDSON RIVER PILOTS, ANY POLLUTION IN THE HUDSON RIVER WAS NOT COMING FROM EXXON'S TANKERS.

THE U.S. COAST GUARD, WHICH IS RESPONSIBLE FOR ENFORCING FEDERAL ANTI-POLLUTION LAWS FOR VESSELS IN THE KINGSTON-HYDE PARK SECTION OF THE HUDSON RIVER, WAS AWARE OF THE BALLAST DISCHARGE OPERATIONS. CAPTAIN JOYCE OF THE U.S. COAST GUARD TESTIFIED THAT THEY HAD NO EVIDENCE OR REPORT OF EXXON HAVING VIOLATED ANY POLLUTION LAWS DURING THE HUDSON RIVER OPERATIONS.

DR. HETLING, DIRECTOR OF THE ENVIRONMENTAL PROTECTION DIVISION OF THE NEW YORK STATE DEPARTMENT OF HEALTH, TESTIFIED THAT HIS DEPARTMENT'S REVIEW SHOWED NO VIOLATIONS OF LAWS OR REGULATIONS OF THE STATE DEPARTMENT OF HEALTH AS A RESULT OF EXXON'S ACTIVITIES. FINALLY, DEAN PALEN, DIRECTOR OF ENVIRONMENTAL SANITATION FOR THE ULSTER COUNTY HEALTH DEPARTMENT, TESTIFIED THAT EXXON'S BALLAST DISCHARGES HAD NO IMPACT ON THE QUALITY OF LOCAL MUNICIPAL WATER SUPPLIES.

REGARDING THE IMPACT OF EXXON'S CLEAN SALT WATER BALLAST DISCHARGES, THE STUDY UNDERTAKEN BY HYDROQUAL ALSO INDICATED THAT THE LARGE VOLUME OF HUDSON RIVER WATER FLOW, BOTH FRESH AND TIDAL, REDUCED THE ADDED SALINITY AT THE POINT OF THE MUNICIPAL WATER INTAKE SYSTEMS TO INFINITESIMAL LEVELS. AS CONFIRMATION OF THIS, DURING THE PEAK HUDSON RIVER WATER LOADING PERIOD OF JULY AND AUGUST 1983, THE SALINITY LEVEL

MEASURED BY THE POUGHKEEPSIE MUNICIPAL WATER AUTHORITY AT THEIR INTAKE POINT REMAINED SIGNIFICANTLY BELOW THE NEW YORK STATE STANDARD FOR THIS REGION OF THE HUDSON.

EXXON DID NOT SELL THE HUDSON RIVER WATER

I ALSO WISH TO EMPHASIZE THAT, CONTRARY TO SOME PRESS REPORTS, NEITHER EXXON NOR ANY AFFILIATE SOLD WATER TO THE ARUBA GOVERNMENT OR ANYBODY ELSE. AS A RESULT OF OPERATIONAL PROBLEMS WITH THE ARUBA GOVERNMENT'S WATER DESALINIZATION PLANTS, WE INCURRED ABOUT $16 MILLION OF FREIGHT COSTS SOLELY ATTRIBUTABLE TO TRANSPORTING HUDSON RIVER WATER TO THE ISLAND OF ARUBA SINCE 1977. HAD WE BEEN ABLE TO PURCHASE THE PORTION OF THIS WATER USED IN OUR REFINERY FROM THE ARUBA MUNICIPAL WATER AUTHORITY, OUR COSTS FOR THAT WATER WOULD HAVE BEEN ABOUT $5 MILLION. THUS, WE INCURRED ABOUT $11 MILLION OF ADDITIONAL WATER SUPPLY COSTS, ABOUT HALF OF WHICH WAS REIMBURSED TO US BY THE ARUBA GOVERNMENT. THE NET RESULT WAS THAT WE INCURRED A LOSS IN HELPING THE ARUBA GOVERNMENT TO MEET ITS OBLIGATIONS TO PROVIDE WATER TO THE ISLAND, INCLUDING EXXON'S REFINERY. THE TRANSPORTATION OF WATER WAS NOT A PROFITABLE VENTURE, BUT A COSTLY UNDERTAKING WHICH WAS UNAVOIDABLE.

Senator D'AMATO. Mr. Graves, thank you for participating.

I don't believe that I said anything about taxes that you avoided in my statement.

Mr. GRAVES. On page 7, you said:

> Exxon declared a business loss on their U.S. tax forms and, consequently, not only decreased their tax bill in Aruba, but also in the United States.

It is true that to the extent that these extra transportation costs were incurred by our Aruba affiliates, it would have been applied to the Aruba income tax, but not to the United States. That was simply the point I was making. It had no effect on the U.S. taxes.

Senator D'AMATO. Are you saying that you never sold any water to Aruba as charged, is that right?

Mr. GRAVES. That's correct. Our reimbursement process was the reimbursement in part for the transportation costs and not for the water itself.

LEGITIMATE CONCERN ABOUT DISCHARGE

Senator D'AMATO. Let me ask you this. I think you would agree there's legitimate concern of the State and the people who live on the Hudson, particularly with regard to the problem of the discharge into the Hudson near those areas where there are inlets or

where the water supply system draws its water. Don't you think that there should be standards and procedures for both the discharge of the ballast—particularly in the Hudson where you might have at various times lack of turbulence to see to it that there's been an adequate dispersal?

Mr. GRAVES. Well, two comments. One is that the positioning of the tankers in the river, the tankers are drawing drafts such that they have to stay pretty much in the main channel to keep them away from being directly over a water system.

Senator D'AMATO. Well, you're talking about your tankers, but let's talk about the proposition in general. Should there not be some standard by which it is determined that it will not pose a hazard or a problem to those who are concerned about the discharge of one of the contaminants, but second, in close proximity where it might be acceptable in an area where there's greater dispersal it would be inappropriate and maybe dangerous and hazardous for it to take place where the community is drawing its drinking water from?

Mr. GRAVES. Well, I was just coming to that. I was just beginning by saying that we don't believe the type of operations we carried on brought our ballast discharge——

Senator D'AMATO. You're being very defensive now. You didn't listen to the question.

Mr. GRAVES. Oh, yes, I did.

Senator D'AMATO. All right. Answer my question.

Mr. GRAVES. Yes. Again, we would take no exception to any regulations which monitor this more closely.

Senator D'AMATO. To set some standards by which we can avoid a repetition of this kind of situation—had you been aware that this would be the reaction, wouldn't you have filed appropriately if there was legislation designed to require it that you indicate where your discharges would be, what the levels would be, et cetera, so that this could have been avoided?

Mr. GRAVES. Well, had we known of the concerns that have since come out of our operations, of course, from a public affairs standpoint, we would like for our operations to be both understood and fully acceptable by anyone that's in the environs of our operations.

Senator D'AMATO. Second, there's the element of what is contained in those discharges and how those discharges are made so that the possible injury to the environment could be avoided; isn't that correct?

Mr. GRAVES. Certainly, and the discharges are continuing today from the commercial traffic on the river and we have to recognize what impact that has on the drinking water systems.

Senator D'AMATO. So it would be fair to say that you are not in opposition to legislation that would proscribe this activity of tankers, with all the understanding of their rights and also their obligations in terms of navigation, in terms of discharge, in terms of taking on water for the proper conduct of commerce in that waterway?

Mr. GRAVES. That's correct, and I think the only additional statement I would make would be to suggest that any legislation be made in such a way so as to not be an administrative burden which would in effect simply stop commercial traffic on the river nor

should it unnecessarily add undue delays in tanker traffic by whatever provisions might be included in the legislation.

NEED TO ENCOMPASS ALL SHIPS UNIFORMALLY

Senator D'AMATO. I think one of the observations that you made that I would hope would be noted—to my staff, and to the State as well—is that I think it should be broadened to encompass more than simply tankers because it certainly doesn't make any sense if people are concerned with respect to taking of water or transportation of water for sale that you do not include barges and others that could be used for this purpose. And then when we talk about discharges, et cetera, those matters should be uniformly applied. It makes no sense to come down on tankers as such and leave a whole area open if we want to see—and I think we should see—a guarantee that people know the water they are drinking is safe and that we are undertaking the proper regulation without unnecessarily impeding commerce and industry.

Mr. GRAVES. Senator, I should point out—and I'm sure you're aware—that there are, of course, water quality regulations in place on the river today.

Senator D'AMATO. I'm aware of that.

Mr. GRAVES. The U.S. Coast Guard are the primary enforcers of those regulations, as you know.

Senator D'AMATO. Mr. Graves, do you have anything else you might want to add?

Mr. GRAVES. No, I don't.

Senator D'AMATO. Well, let me thank you for your candor and your frankness and thank you for participating and coming in today. It's not always easy to participate in a hearing where you are characterized as a terrible ogre. Let's hope that we can come up with, either on the State or on the Federal level, legislation. I do think some will be necessary so that we can more clearly define and protect the rights of the general public to a safe, secure environment; and by the same token, protect legitimate business interests which do not in terms of commerce infringe upon the ecology of our State and Nation. I think that's the balance we need to strike. It's easier to say than to do.

Mr. GRAVES. Exactly.

Senator D'AMATO. But I think that's the balance that we are striving for. I thank you for your participation and we will leave the record open for anyone who has participated who might like to send in additional information and for anyone who has not, we'd like to leave the record open for another 10 days.

[No additional information was supplied at the time of this publication.]

Senator D'AMATO. This hearing is adjourned.

[Whereupon, at 3:15 p.m., the hearing was adjourned.]

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